March 30 1871
Phillips v. Dunlop
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Campbell v. Durant
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~926.~~ 127

DUNLOP, MONCURE & CO., AND LOUISA D. MINOR, PLAINTIFFS IN ERROR,

vs.

JAMES E. ZUNTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 6, 1869.

April 6 1871
Reversed
Mr Miller

SUPREME COURT OF THE UNITED STATES.

No. 326.

DUNLOP, MONCURE & CO., AND LOUISA D. MINOR, PLAINTIFFS IN ERROR,

vs.

JAMES E. ZUNTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Note annexed to petition	4	2
Protest annexed to petition	5	2
Citation to Henry Doyal	7	3
Marshal's return	9	3
Citation to Mrs. Caroline D. Moncure	9	3
Marshal's return	11	4
Judgment by default	12	4
Agreement for judgment	12	4
Final judgment	14	5
Writ of fieri facias	16	5
Marshal's return on said writ	18	6
Advertisement slips annexed to marshal's return	21	7
Document A, notice of demand and seizure	21	8
Inventory of the property seized	24	9
Marshal's return on the notice of demand	26	10
Document B, referred to in the marshal's return on said writ	27	10
C, referred to in the marshal's return on said writ	28	11
D, referred to in the marshal's return on said writ	29	11
Motion and order appointing curator ad hoc	31	11
Deed of sale to James E. Zunts	31	12
Application for monition	50	17
Publication of monition	52	17
Marshal's certificate of the publication of the monition	56	18

	Original.	Print.
Opposition of Elmore & King to monition	57	19
of Dunlop & McCance to monition	61	29
of Mrs. L. D. Minor to monition	65	21
Supplemental opposition of Mrs. L. D. Minor to monition	69	22
Additional supplemental opposition of Mrs. L. D. Minor to motion	70	22
Marshal's return	72	23
Motion and order fixing oppositions	72	23
Marshal's return	73	23
Order of continuance	73	23
Hearing and continuance	74	23
Note of evidence	75	24
Testimony of Charles Andrew Johnson and John H. Ilsley, jr.	76	24
Document B.	77	24
C, admission	77	25
Rule 1st of the rules of court	78	25
Deed marked D	79	25
The monition	79	25
Hearing and continuance	79	25
Bill of exceptions of opponents	80	26
Verdict and judgment	82	26
Bill of exceptions of opponents	86	27
Do	89	28
Do	90	29
Do	93	29
Do	95	30
Do	97	31
Do	99	31
Do	101	32
Petition for writ of error of Mrs. L. D. Minor, opponent	102	32
Order thereon	103	33
Petition for writ of error of Dunlop, Moncure & Co., opponents	104	33
Order thereon	105	33
Bond for writ of error of Mrs. L. D. Minor	105	33
of Dunlop, Moncure & Co	108	34
Clerk's certificate	111	35
Writ of error of Mrs. L. D. Moncure	112	35
of Dunlop, Moncure & Co	114	36
Citation in error and service	116	36
Do	118	37

1 *Petition.—Filed February 26th*, 1866.

United States circuit court, sixth circuit and eastern district of Louisiana.

MARGARET R. DEAS, WIDOW, &C., *vs.* MRS. CAROLINE D. MONCURE & ALS., HEIRS of Henry Doyal. } No. 3788.

To the honorable the judges of the circuit court of the United States in and for the sixth circuit and eastern district of Louisiana:

The petition of Margaret R. Deas, widow of the late James S. Deas, respectfully shows that she is a citizen of the State of Alabama, residing in the State, city of Mobile; that your petitioner is holder and owner of a promissory note signed by H. Doyal, (being Henry Doyal,) dated
2 January 27th, 1859, for ($21,600) twenty-one thousand six hundred dollars, payable on the 2d of March, eighteen hundred and sixty-one, to the order of James S. Deas, and by him endorsed in blank, negotiable and payable at the Citizens' Bank of Louisiana, in New Orleans; that said note at its maturity was duly protested for non-payment after due demand of payment, at the place of payment, as appears by said note and the protest thereof, hereto annexed for reference.

Petitioner further avers that the said James S. Deas, at the time of making and endorsing of said note, was a citizen of the State of Alabama, and so continued until his death; that said H. Doyal is dead, and his succession has been accepted purely and simply by his heirs, viz: Caroline D. Moncure, Mrs. Louisa D. Minor, Henry Doyal,
3 and Virginia Doyal, wife of Harry H. Minor, all children of said Henry Doyal, and citizens of the State of Louisiana, who neglect and refuse to paid said sum, though amicably requested.

Wherefore petitioner prays that said Caroline D. Moncure and Mrs. Louisa D. Minor, widows, and Henry Doyal and Virginia Doyal, and her said husband, Harry H. Minor, be cited, and, after due proceedings, condemned in solido to pay to petitioner the said sum of twenty-one thousand six hundred dollars, and interest from 5th March, 1861; and petitioner asks for general relief and costs of suit.

(Signed) TH'S ALLEN CLARKE,
For Pet'r.

Service accepted and citation waived.
New Orleans, L'a, Feb'y 27th, 1866.
(Signed) C. D. MONCURE.

Service accepted and citation waived.
New Orleans, 23d February, 1866.
4 (Signed) VIRGINIA D. MINOR.
L. D. MINOR.

I authorize my wife to accept service and waive citation in this suit.
(Signed) H. H. MINOR.

Service accepted and citation waived.
New Orleans, 27th December, 1866.
(Signed) H. R. DOYAL.

Note annexed to and filed with petition.

$21,600. JANUARY 27TH, 1859.

On the second of March, eighteen hundred and sixty-one, I promise to pay to the order of James S. Deas twenty-one thousand six hundred dollars, value received, negotiable and payable at the Citizens' Bank in New Orleans, L'a.

(Signed) H. DOYAL.

No. 3. Due 2d March, 1861. 15706.

Endorsed: James S. Deas.
Pay C. A. F. Rondeau, cashier, or order.
DAN'L C. SAMPSON, *Cashier.*

5 *Protest annexed to and filed with petition.*

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that, on this fifth day of March, in the year one thousand eight hundred and sixty-one, at the request of the cashier of and holder for the Louisiana State Bank of the original note, whereof a true copy is on the reverse hereof written, I, Edward G. Gottschalk, a notary public, dwelling in the city of New Orleans, duly commissioned, demanded payment for said note during banking hours at the bank therein designated, and was answered by the paying teller, note clerk, and proper bookkeeper, to whom I presented said note, that no funds had been deposited there to pay the same.

6 Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange. damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Selim Wagner and Forrester Brugier, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) E. G. GOTTSCHALK,
Notary Public.

$21,600. JANUARY 27TH, 1859.

On the second of March, eighteen hundred and sixty-one, I promise to pay to the order of James S. Deas twenty-one thousand six
7 hundred dollars, value received, negotiable and payable at the Citizens' Bank in New Orleans, L'a.

H. DOYAL.

(Endorsed:) James L. Deas.
Pay C. A. F. Rondeau, cashier, or order.
DANIEL C. SAMPSON, *Cashier.*

Citation to Henry Doyal.—Issued 26th February, 1866.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

MARGARET R. DEAS, WIDOW, &C.,
vs.
MRS. CAROLINE D. MONCURE & ALS., HEIRS of Henry Doyal. } No. 3788.

You are hereby commanded to summon Henry Doyal, a citizen of the State of Louisiana, to comply with the demand of Margaret R. Deas, widow of the late James S. Deas, a citizen of the State of Ala-
8 bama, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of April, 1866.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 26th day of February, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

9 *Marshal's return.*

Received February 26th, 1866, and, on the 27th day of same month and year, came Henry Doyal, the defendant named herein, into the U. S. marshal's office in this city, and there notified me that he accepted service of the within citation and plaintiff's petition accompanying the same; this done voluntarily by him.

Returned, served as above set forth.

New Orleans, February 28th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Citation to Mrs. Caroline D. Moncure.—Issued 26th February, 1866.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

MARGARET R. DEAS, WIDOW, &C.,
vs.
MRS. CAROLINE D. MONCURE & ALS., HEIRS OF Henry Doyal. } No. 3788.

10 You are hereby commanded to summon Mrs. Caroline D. Moncure, a citizen of the State of Louisiana, to comply with the demand of Margaret R. Deas, widow of the late James S. Deas, a citizen of the State of Alabama, contained in the petition of which a copy ac-

companies this citation, or to deliver her answer to the same in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against her by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of April, 1866.

Witness the Honorable Salmon P. Chase, Chief Justice of the
11 Supreme Court of the United States of America, at the city of New Orleans, this 26th day of February, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received February 26th, 1866. and, on the 27th day of same month and year, served a copy of the within citation and plaintiff's petition accompanying the same, on Mrs. Caroline D. Moncure, the defendant named herein, by leaving said documents in the hands of Rodolph Bachemin, a free white person, over 18 years of age, and overseer of said defendant's plantation, in the parish of Plaquemine, L'a, left bank of the Mississippi River, about 30 miles below this city, and the domicil
12 of said defendant, who was absent at the time of service on said Rodolph Bachemin

New Orleans, February 28th, 1866.

(Signed) THEO. FAGOT,
Sp'l D'y U. S. Marshal.

Judgment by default.—Extract from the minutes.

November term, 1865.

NEW ORLEANS, *Tuesday, March 27th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

MARGARET R. DEAS, WIDOW, &C.,
vs.
MRS. CAROLINE D. MONCURE & ALS., HEIRS of Henry Doyal. } No. 3788.

On motion of Tho's A. Clarke, esq., attorney for plaintiff, and on showing to the court that the defendants herein, although duly cited, have failed to answer, ordered that judgment by default be entered against them.

13 *Agreement for judgment.—Filed April 27th*, 1866.

THE STATE OF LOUISIANA,
City of New Orleans:

It is consented that, in the suit of Margaret Deas against the heirs of Henry Doyal, in the circuit court of the United States for the eastern district of Louisiana, the judgment shall be rendered for the amount of

the note, interest, and costs, and that the judgment shall carry interest at the rate of eight per cent. per annum. The consideration of this agreement is, that there shall be a stay of execution until the first day of February next, and that upon the payment of the interest due at that date on the said debt, that there shall be an extension for the term of an additional year. The judgment is to be rendered against the heirs respectively for their virile shares, and not to be in solido.

(Signed) H. R. DOYAL.
" L. D. MINOR.
14 " C. D. MONCURE.
" W. O. ELMORE,
Attorney for V. D. Minor & H. H. Minor.

NEW ORLEANS, *April* , 1866.

Final judgment.—From judgment docket.

Circuit court of the United States, sixth circuit and eastern district of Louisiana, April term, 1866.

NEW ORLEANS, *Friday, April 27th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

MARGARET R. DEAS, WIDOW, &C., *vs.* MRS. CAROLINE D. MONCURE & ALS., HEIRS OF Henry Doyal. } No. 3788.

By reason of the default herein entered on the 27th March, 1866, the law and the evidence, and the written consent of the defendants
15 this day filed, it is ordered, adjudged, and decreed that Margaret R. Deas, widow of the late James S. Deas, do have and recover of Mrs. Caroline D. Moncure, Mrs. Lousia D. Minor, Henry Doyal, and Virginia Doyal, wife of Henry H. Minor, all children and heirs of Henry Doyal, deceased, the sum of twenty-one thousand six hundred dollars, with 8% interest thereon from 5th March, 1861, till paid, and costs of suit.

It is further ordered that a stay of execution be granted on this judgment until the first day of February, 1867, and that upon the payment of all interest accrued on that day a further stay be granted for an additional year, and that this judgment shall operate against the respective heirs only for their virile shares, in the succession of their deceased father, Henry Doyal.

Judgment rendered April 27th, 1866.
Judgment signed May 8th, 1866.
(Signed) E. H. DURELL, *Judge.*

16 *Writ of fieri facias.—Issued March 6th*, 1868.

Circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana.

The President of the United States to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from Mrs. Caroline D. Moncure, Mrs. Louisa D. Minor, Henry Doyal, and Virginia Doyal, wife

of Henry H. Minor, all children and heirs of Henry Doyal, deceased, the sum of twenty-one thousand six hundred dollars, with eight per cent. interest thereon from 5th March, 1861, till paid, and costs of suit, clerk's costs, $29 40, and the costs of this writ, cash, which Margaret R. Deas, widow of the late James S. Deas, lately recovered by judg-
17 ment of the circuit court of the United States for the 6th circuit and eastern district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Mrs. Caroline D. Moncure, Mrs. Louisa D. Minor, Henry Doyal, and Virginia Doyal, wife of Henry H. Minor, in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said above-named Caroline D. Moncure & als., in your district, whereof they were owners on the 8th day of May, 1866, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Mrs. W'ow Deas, for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

18 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 6th day of March, A. D. 1868, and 92d year of the independence of the United States.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return on the foregoing writ.—Returned & filed June 19th, 1868.

Received March 6th, 1868, by the U. S. marshal; and, in obedience to the within writ, I did demand from Mrs. Louisa D. Minor, one of the heirs of Henry Doyal, deceased, the payment of the sum of five thousand four hundred dollars, with interest thereon at eight per cent. per annum, being one-fourth of the whole judgment; and to secure the payment of which I did seize and take into possession the property described in document marked "A," and in the inventory thereto annexed
19 marked "B," and placed a keeper in charge of the same; and then, after the legal delay had elapsed, I advertised the said property for sale, and according to law, which advertisement appeared in 2 newspapers, viz, the New Orleans Republican and the New Orleans Advocate, both papers printed and published in this city—in the former-named paper on the 1st, 4th, 7th, 16th, 18th, & 25th April, and the 2d May, 1868, and in the latter-named paper on the 11th, 18th, & 25th April, and the 2d May, 1868—setting forth the time, place, day, and hour of sale, as well as the terms thereof; and after having had the property duly appraised as the law requires, the appraisement notices and the appraisement being also hereto annexed and referred to as a part of this return, and marked B, C, and D, and also having procured a certified copy of the mortgages bearing on said property, I offered the said property for sale by reading said advertisements and said certificate; but,
20 after duly crying the same, and there not having been two-thirds of the appraised value of said property offered for the same, I withdrew the said property, and caused it again to be advertised for sale at a second adjudication in the two aforenamed papers—in the first-named on the 6th, 19th, and 22d May, 1868, and in the latter-named paper on the 9th, 16th, and 22d May, 1868—the terms of which sale were twelve months' credit, with bond and lien, according to law, and which sale was made at the same place and hour of the first offering, viz, at the door of the court-house of the parish of Ascension, in Donaldson-

ville, on Friday, the 22d May, 1868, at which sale the property was adjudicated unto James E. Zuntz, of the city of New Orleans, for the sum of ten thousand dollars, payable in twelve months from the day of adjudication, who, having paid, according to the terms published, five hundred dollars in cash, as the costs of said suit up to the present
21 time, unto the U. S. marshal, as part of said purchase price, hath furnished his bond, conditioned as the law requires, for the balance of the adjudication, viz, nine thousand five hundred dollars, which bond is now in the possession of the U. S. marshal.

And this writ is therefore returned according to the facts hereinbefore set forth, and no money has as yet been realized by the U. S. marshal on behalf of this writ, except the $500 for costs above set forth; and the amount of the bond given by the purchaser, with the interest thereon as stipulated, will, when paid, be duly credited to the within-named writ, by F. J. Herron, U. S. marshal, or his legal successor.

New Orleans, June 19th, 1868.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Advertisement slips annexed to marshal's return on the writ of fieri facias.

MARGARET R. DEAS, WIDOW, ETC.,
vs.
MRS. C. D. MONCURE AND ALS., CHILDREN and heirs of Henry Doyal, deceased.

In the United States circuit court for the fifth circuit and district of Louisiana, No. 3788.

By virtue of a writ of fieri facias, issued and to me directed by the above-named court in the above entitled and numbered suit, and received by me on the sixth March, 1868, I have seized and taken into my possession, and will expose for sale at public auction to the highest bidder, on Monday, the fourth day of May, 1868, at the hour of twelve o'clock noon, at the door of the court-house of the parish of Ascension, in Donaldsonville, Louisiana, the following-described property, viz:

A certain plantation situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, formerly known as the "Hard Times," but now known as the "Southwood" plantation, and bounded on the upper line by the line of the parish of Iberville, and on the lower line by lands now or formerly belonging to S. R. Tillotson, and measures about twenty-eight and a half arpents front on the Mississippi River by eighty arpents in depth between diverging lines, with the opening thereto belonging; together with all the buildings and improvements thereon, as well as all the cattle, live stock, implements of husbandry, etc., of whatsoever kind or nature thereon or thereunto belonging; twenty-three mules, four carts, thirty-five plows, twenty thousand new bricks, and a lot of corn in barrels.

Seized to satisfy, as far as may be, the plaintiff's claim herein, viz: five thousand four hundred dollars, together with interest and all costs, as per judgment.

Terms: Cash, at time of adjudication, in United States treasury notes; act of sale, records, and internal revenue stamps at expense of purchaser.

United States marshal's office, New Orleans, March 30, 1868.

F. J. HERRON,
U. S. Marshal for the District of Louisiana.

No. 650—Ap'l 4, 7, 11, 18, 25, M'y 2.

MARGARET R. DEAS, WIDOW, ETC.,
vs.
MRS. C. D. MONCURE AND ALS., CHILDREN and heirs of Henry Doyal, deceased.

In the United States circuit court for the fifth circuit and district of Louisiana, No. 3788.

By virtue of a writ of fieri facias, issued and to me directed by the above-named court in the above entitled and numbered suit, and received by me on the sixth March, 1868, I have seized and taken into my possession, and will expose for sale at public auction to the highest bidder, on Friday, the twenty-second day of May, 1868, at the hour of twelve o'clock noon, at the door of the court-house of the parish of Ascension, in Donaldsonville, Louisiana, the following-described property, viz:

A certain plantation, situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, formerly known as the "Hard Times," but now known as the "Southwood" plantation, and bounded on the upper line by the line of the parish of Iberville, and on the lower line by lands now or formerly belonging to S. R. Tillotson, and measures about twenty-eight and a half arpents front on the Mississippi River by eighty arpents in depth between diverging lines, with the opening thereto belonging, together with all the buildings and improvements thereon, as well as all the cattle, live stock, implements of husbandry, etc., of whatsoever kind or nature thereon or thereunto belonging; twenty-three mules, four carts, thirty five plows, twenty thousand new bricks, and a lot of corn in barrels.

Seized to satisfy, as far as may be, the plaintiff's claim herein, viz: five thousand four hundred dollars, together with interest and all costs, as per judgment.

Terms of sale: This being the second adjudication, the above property will be sold at twelve months' credit, the purchaser being required to furnish good and sufficient joint and several security, with preference and special mortgage privilege on the property sold, bearing interest at the rate of eight per cent. per annum, and to pay in cash an amount to cover all the costs of suit, amount to five hundred dollars, ($500,) more or less.

Costs of deed, bond, recording, internal revenue stamps, etc., at expense of purchaser.

United States marshal's office, New Orleans, April 5, 1868.

F. J. HERRON,
U. S. Marshal District of Louisiana.

No. 735—M'y 6, 14, 22 A.

Document "A," referred to in the foregoing return.—Notice of demand and seizure.

22

MARGARET R. DEAS, WIDOW, &C.,
versus
MRS. C. D. MONCURE & ALS., CHILDREN and heirs of Henry Doyal, deceased.

In the circuit court of the United States for the 5th circuit and district of Louisiana, No. 3788, fieri facias writ.

To Mrs. Louisa D. Minor, child and one of the heirs of Henry Doyal, deceased, and one of the defendants in the above-entitled suit:

Take notice that by virtue of a writ of fieri facias, issued and to me

directed by the above-named court, in the above-entitled suit, and received by me on the 6th day of March, 1868, I now demand of you, as one of the defendants in the above suit, the payment of the sum of fifty-four hundred dollars, ($5,400 00,) with interest on the same at the rate of eight per cent. per annum till paid, being one-fourth of the judgment obtained in above suit, and all costs, to secure the payment of which I have this day seized and taken into my possession a cer-
23 tain plantation, situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, and known as the "Southwood" plantation, together with all the buildings and improvements thereon, and all the live stock, cattle, implements of husbandry, &c., of whatsoever nature or kind thereunto belonging or in any wise pertaining, as per inventory accompanying.

And if the above-named amount, together with interest and all costs, be not paid within three days from the service of this notice, I shall proceed to advertise said property, both real and personal, for sale, after due appraisement, and according to law, in order to satisfy the above-named amount and proportion of said judgment, together with interest and all costs, reserving the right of plaintiff to claim any balance hereafter. A delay of one day for over twenty miles distance of your domicil from this our court, in addition to the above three days, is
24 allowed you by law.

U. S. marshal's office, New Orleans, March 14th, 1868.

(Signed) J. J. PREIS,
Dep'y U. S. Marshal Dist. of L'a.

N. B.—The above-described plantation was formerly known as the "Hard Times" plantation, and is bounded on the upper line by the line of the parish of Iberville, and on the lower line by the lands now or formerly belonging to S. R. Tillotson, and measures about twenty-eight and a half arpents front on the Mississippi River, by eighty arpents in depth, between diverging lines, with the opening thereto belonging.

(Signed) J. J. PREIS,
D'y U. S. Marshal Dist. of Louisiana.

U. S. circuit court.

MARGARET R. DEAS, &c., *vs.* MRS. C. D. MONCURE, &c., &c. } No. 3788.

25 Inventory of the following-described property, seized in the above-entitled suit, viz:

One plantation, formerly known as the "Hard Times," and is bounded on the upper line by the line of the parish of Iberville, and on the lower line by the lands now or formerly owned by S. R. Tillotson, and measuring twenty-eight and a half arpents front on the Mississippi River by eighty arpents in depth between diverging lines, with the opening thereto belonging.

(1) One sugar-house and utensils.
(1) One cotton gin.
(2) Two cotton presses.
(1) One two-story brick dwelling-house and kitchens.
(2) Two corn cribs.
(2) Two stables.

(1) One blacksmith shop.
(1) One cooper shop.
(24) Twenty-four negro cabins.
(1) One hospital, and kitchen attached to.
(1) One overseer's house.
(8) Eight cows and eight calves.
(9) Nine oxen.
26 (23) Twenty-three mules.
(4) Four carts.
(35) Thirty-five ploughs.
(20,000) Twenty thousand new bricks, more or less.
(500) Five hundred barrels of corn.
Seized March 16th, 1868.
(Signed) O. B. BOISFONTAINE,
D'y U. S. Marshal,

Marshal's return on the foregoing notice of demand and seizure.

Issued March, 14th, 1868, and on the 16th day of same month and year seized and took into possession the property described in the copy of the inventory hereto annexed, and served a copy of the within notice and the said inventory on Mrs. Louisa D. Minor, personally, at her domicil, on the Southwood plantation, parish of Iberville, L'a, at about 85 miles from New Orleans, on the same 16th of March, 1868, she being named herein as one of the children and heirs of Henry Doyal, deceased.
New Orleans, March 18th, 1868.
27 (Signed) O. B. BOISFONTAINE,
D'y U. S. Marshal.

Document B, referred to in the foregoing return on writ of fieri facias.

U. S. circuit court.

MARGARET R. DEAS, WIDOW, & AL., *vs.* MRS. C. D. MONCURE & ALS., &C., HEIRS, &C. } No. 3788.

The undersigned, duly appointed appraisers in above-entitled suit, failing to agree as to the appraised value of the property for sale, do hereby agree upon Mr. William C. Lawes as umpire to decide in above matter, and agree to be bound by his decision in the matter.
Donaldsonville, parish of Ascension, L'a, May, 1868.
(Signed) A. J. WARLEY,
Appr. for Pl'ff.
" C. L. COLOMB,
Appr. for Defendant.

28 I, the undersigned, duly approved as umpire in the above matter, do hereby decide and value the property at forty-five thousand dollars in U. S. currency, and no more.
Donaldsonville, parish of Ascension, L'a, May 4th, 1868.
(Signed) W'M C. LAWES, *Umpire.*

Sworn to and subscribed before me this 4th day of May, 1868.
(Signed) R. S. SIMS,
Justice of the Peace.

Document C, referred to in the foregoing return on writ of fieri facias.

U. S. circuit court, 5th circuit and district of Louisiana, U. S. marshal's office, New Orleans, April 14th, 1868.

MARGARET R. DEAS, WIDOW, &c., *vs.* MRS. C. D. MONCURE & ALS., &c., &c. } No. 3788.

To Messrs. Clarke & Bayne, attorneys for plaintiff in above suit:

29 Please take notice that the property seized under the writ of fieri facias, issued in the above-entitled suit, is advertised to be sold on the 2d of May next, at 12 o'clock m., at the court-house of the parish of Ascension; and you are requested to appoint an appraiser in due season to value said property; failing in which, the U. S. marshal will appoint an appraiser in your stead at least 2 days before said sale.

(Signed) J. J. PREIS,
D'y U. S. Marshal Dist. of L'a.

Captain Warley is hereby appointed appraiser in behalf of plaintiff. April 17th, 1868.

(Signed) CLARKE & BAYNE,
Att'ys for Pl'ff.

Document D, referred to in the foregoing return on writ of fieri facias.

U. S. circuit court, 5th circuit and district of Louisiana, U. S. marshal's office, New Orleans, April 14th, 1868.

30 MARGARET R. DEAS, WIDOW, &c., *vs.* MRS. C. D. MONCURE & ALS., &c., &c. } No. 3788.

To Mrs. Louisa D. Minor, defendant in above suit.:

Please take notice that the property seized under writ of fieri facias, issued in the above-entitled suit, is advertised to be sold on the 2d of May next, at 12 o'clock m., at the court-house of the parish of Ascension, and you are requested to appoint an appraiser, in due season, to value said property; failing in which, the U. S. Marshal will appoint an appraiser in your stead at least 2 days before said sale.

(Signed) J. J. PREIS,
D'y U. S. Marshal Dist. of L'a.

To Mrs. L. D. Minor, personally.

In the above-entitled suit I hereby appoint Mr. C. L. Colomb to act as my appraiser. His action in the matter will be recognized by me.

31 Southwood Plant'n, April, 1868.

(Signed) L. D. MINOR, *Defendant.*

Motion and order appointing curator ad hoc.— Extract from the minutes of Tuesday, July 7th, 1868.

MARGARET R. DEAS, WIDOW, &c., *vs.* MRS. CAROLINE D. MONCURE & ALS. } No. 3788.

In this case, it appearing that H. H. Minor and Virginia, his wife,

are absent from this State, and that they have no agent known to the parties in this State, it is ordered by the court that Silas W. Sawyer be appointed curator ad hoc to receive notices from the marshal of appraisement and whatever other notice of seizure that may be necessary under the execution in this case.

Deed of sale to James E. Zunts.

32 UNITED STATES OF AMERICA,
District of Louisiana:

MARGARET R. DEAS, WIDOW, &C.,
vs.
MRS. CAROLINE D. MONCURE ET ALS., HEIRS of Henry Doyal. } No. 3788.

In the United States circuit court for the fifth judicial circuit and district of Louisiana.

Whereas I, F. J. Herron, marshal of the United States for the district of Louisiana, by virtue of a writ of fieri facias, issued by the above-named court in the above entitled and numbered suit, and received by me on the sixth day of March, 1868, did make legal demand on the 16th day of March, 1868, of Mrs. Louisa D. Minor, one of the heirs of Henry Doyal, deceased, personally, for the payment of the sum of five thousand four hundred dollars, with interest thereon at the rate of eight per cent. per annum from the 5th day of March, 1861, until paid, and
33 all costs of suit, to secure the payment of which said demand, interest, and all costs of suit, on the same 16th day of March, 1868, I seized and took into possession according to law the following-described property, viz:

A certain plantation situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, formerly known as the "Hard Times," but now known as the "Southwood" plantation, and bounded on the upper line by the line of the parish of Iberville and on the lower line by lands now or formerly belonging to S. R. Tillotson, and measures about twenty-eight and a half arpents front on the Mississippi River by eighty arpents in depth between diverging lines, with the opening thereto belonging; together with all the buildings and improvements thereon, as well as all the cattle, live stock, implements of husbandry, &c., of whatsoever kind or nature thereon
34 or thereunto belonging, "twenty-three mules, four carts, thirty-five plows, twenty thousand new bricks, and a lot of corn in barrels, and served a notice of said seizure, with an inventory of the property seized, on the said Mrs. Louisa D. Minor, personally, on the said 16th March, 1868, and placed a keeper in charge of the property seized; and the legal delay having elapsed, and payment not having been made, I advertised the said property for sale, according to law, to the highest bidder for cash, the said sale to take place on Monday, the fourth day of May, 1868, at the court-house, in the parish of Ascension, Louisiana, at the hour of twelve o'clock at noon, and which advertisement, containing a full description of the property to be sold, and also the day, place, hour, and terms of sale, which terms were 'cash' in United States treasury notes at the time of adjudication," appeared in the New Orleans Republican and the New Orleans Advocate, two newspapers
35 printed and published in the city of New Orleans—in the first-

named paper on the 1st, 4th, 7th, 16th, 18th, and 25th of April, and the 2d of May, 1868, and in the last-named paper on the 11th, 18th, & 25th April, and the 2d May, 1868.

And now, after having had the aforesaid property appraised as the law requires, and having fulfilled all the previous and necessary legal requisites, I commenced the sale of the said property on the day and at the place and hour specified in the said advertisement, by reading in a loud and audible voice to the bystanders the said advertisement, which contained a description of the property and the terms of sale, and also by reading the official certificate of mortgages *bearing on said property in the name of Mrs. Louisa D. Minor, which are as follows, viz:*

This reference approved.—D. Urban, clerk.

"First. A special mortgage granted, in solido, by Mrs. Louisa Doyal, wife of John S. Minor, by her said husband, assisted and authorized by the mandate of the Honorable St. M. Berault, judge of the
36 fourth judicial district court of the State of Louisiana in and for the parish of Ascension, Mistress Caroline Moncure, of lawful age, wife of Charles Moncure, of the parish of Plaquemines, in this State, by her said husband assisted and authorized, and also authorized by the Hon. Victor Burthi, judge of the second judicial district court of the State of Louisiana in and for the parish of Plaquemine, Henry R. Doyal, of full age of majority, residing in the parish of Ascension, and Harry H. Minor, of the parish of Ascension, acting for Miss Virginia E. Doyal, a minor, as her special tutor 'ad hoc,' under the appointment of the hon. the fourth judicial district court of Louisiana in and for the said parish of Ascension, and duly authorized to act by a judgment of said court, based on the proceedings of a special family meeting, duly homologated and approved, sole heirs by law and testament of the late Henry Doyal, deceased, in favor of Henry M. Moncure, of the city of
37 Richmond, State of Virginia, by act before Adolphe Boudousquie, notary public, duly commissioned and sworn, in and for the city and parish of Orleans, under date of 28th May, 1861, to secure the payment of the sum of one hundred and fifty thousand dollars, for cash and credit advanced to them, which the said Moncure agreed to raise and appropriate for the purpose of carrying on the plantation hereinabove described, and others, which said mortgage is recorded in book of conventional mortgages No. 11, on page 345 et seq., on the 3d June, 1861.

"Second. A judicial mortgage, resulting from the inscription in my office of a judgment rendered by the hon. the circuit court of the United States, sixth circuit and eastern district of Louisiana, on the 27th of April, 1866, and signed by E. H. Durell, judge of said court, on the 8th May, 1866, in the words and figures following, to wit:

"'By reason of the default herein entered on the 27th March,
38 1866, the law and the evidence, and the written consent of the defendants this day filed, it is ordered, adjudged, and decreed that Margaret R. Deas, widow of the late James S. Deas, do have and recover from Mrs. Caroline D. Moncure, Mrs. Louisa D. Minor, Henry Doyal, and Mrs. Virginia Doyal, wife of Henry H. Minor, all children and heirs of Henry Doyal, deceased, the sum of twenty-one thousand six hundred dollars, with 8% interest thereon from 5th March, 1861, till paid, and costs of suit. It is further ordered that a stay of execution be granted on this judgment until the first day of January, 1867, and that, upon the payment of all interest accrued, a further stay be granted for an additional year, and that this judgment shall operate against the

respective heirs only for their virile shares in the succession of their deceased father, Henry Doyal.'

"Which said judgment is recorded in my office in book of judicial mortgages No. 2, page 255 et seq., on the 1st June, 1866.

39 "Third. A special mortgage granted by Mrs. Louisa D. Minor, in favor of Messrs. Elmore & King, a legal firm in the city of New Orleans, by act before George William Christy, a notary public, duly commissioned and sworn, in and for the parish and city of New Orleans, on the 21st December, 1866, to secure the payment of the sum of one thousand dollars, represented by her promissory note, drawn to her own order and endorsed by her, dated on the 21st December, 1866, and made payable two years after date, and bearing eventual interest at the rate of eight per cent. per annum, which said note is signed and paraphed by the aforesaid notary in order to identify it with the said act of mortgage, which said mortgage is recorded in my office in book of conventional mortgages No. 12, page 221, et seq., on 24th December, 1866.

"Fourth. A special mortgage, granted by Mrs. Louisa Doyal, widow of the late John S. Minor, of the parish of Ascension, Mrs. Caro-
40 line Doyal, of the parish of Plaquemine, widow, by first marriage, of Charles Moncure, and now wife of Edward D. Benedict, of the city of New Orleans, and William A. Elmore, of the city of New Orleans, acting, 1st, as the special attorney in fact of Mrs. Virginia Doyal, wife of Henry H. Minor, of the parish of Plaquemine, by virtue of a power of attorney granted to him by the said Mrs. Virginia Minor, duly assisted and authorized by her said husband by an act under private signature bearing date of the 7th of February, 1867, and, 2d, as the special attorney in fact of Henry R. Doyal, of the parish of Ascension, of this State, by virtue of a power of attorney, by act under private signature dated the , in favor of Dunlop, Moncure & Co., a commercial firm now in liquidation in Richmond, State of Virginia, for the sum of sixty thousand dollars, by act before Felix Grima, a notary
41 public, duly commissioned and sworn, in and for the city and parish of New Orleans, on the 21st February, 1867, which mortgage was granted by Mrs. Louisa Doyal on the property hereinabove described, to secure the payment of four certain promissory notes, dated 21st February, 1867, subscribed by her to her own order and by herself endorsed, one for the sum of two thousand dollars, payable on the 1st January, 1868, one for the sum of three thousand dollars, payable on the 1st January, 1869, one for the sum of four thousand dollars, payable on the 1st January, 1870, and one for the sum of six thousand dollars, payable on the 1st February, 1871, at the Citizens' Bank of Louisiana, in the city of New Orleans, and bearing interest at the rate of five per cent. per annum from the 7th August, 1866, until paid, which said notes have been paraphed by the aforesaid notary in order to identify them with the said act of mortgage, which is recorded in my
42 office in book of conventional mortgages No. 12, page 275 et seq., on the 8th March, 1867.

"Fifth. A special mortgage, granted by Mrs. Louisa Doyal, widow of the late John S. Minor, of the parish of Ascension, in favor of Messrs. John Chaffe and Brother, of the city of New Orleans, for the sum of eight thousand dollars, by act before William Shannon, a notary public in and for the parish of Orleans, under date of 21st February, 1867, to secure the payment of three certain promissory notes, dated 21st February, 1867, drawn by her, and made payable to her own order as follows, to wit: one for the sum of four thousand dollars, payable eight months after date; two for the sum of two thousand dollars each, paya-

ble respectively on the 15th November and the 15th December, 1867, and bearing interest from and after maturity, and until final payment, at the rate of eight per cent. per annum, which said notes have been duly paraphed by the aforesaid notary in order to identify them
43 with the said act of mortgage, which said mortgage is recorded in my office in book of conventional mortgages No. 12, page 300 et seq., on the 30th April, 1867.

"Given under my official hand and signature, at the parish of Ascension, on this 25th day of the month of April, A. D. 1868.

[SEAL.] (Signed) "FELIX REYNAUD, *Recorder.*

"By virtue of the authorization contained in an act passed before Theodore O. Starke, a duly qualified notary public, in and for the parish and city of Orleans, on the 19th day of March, 1867, a duly certified copy whereof is annexed in book of mortgages No. 11 page 545, I have this day erased, cancelled, and annulled the mortgage herein 'firstly mentioned.'

"Parish of Ascension, May 2nd, 1868.

[SEAL.] (Signed) "FELIX REYNAUD, *Recorder.*"

44 And now, after having read the aforementioned documents, the aforesaid property was put up for competition at public auction to the highest bidder, according to the terms set forth in the aforenamed advertisement; and, after duly crying the said property and the appurtenances, there not having been two-thirds of the appraised value of said property and appurtenances bid for the same, as the law requires, I withdrew the same and publicly announced, "No adjudication thereof." I then caused the said property to be advertised for sale at a second adjudication, to the highest, bidder, at twelve months' credit, according to law, the said advertisement containing a description of the property for sale, and the terms and conditions of said sale appeared in the two newspapers aforenamed, in the Republican on the 6th, 24th, 19th, and 22nd May, 1868, and in the Advocate on the 9th, 16th,
45 & 22nd days of May, 1868, on which last-named day the said second adjudication was advertised to be made, at the place and hour named in the 1st advertisement, as set forth above, when and where, after having completed and fulfilled all the necessary legal requisites for a second adjudication, I commenced the said second adjudication by reading in a loud and audible voice unto the bystanders the advertisement containing a description of said property and the terms and conditions of sale, which terms and conditions were twelve months' credit, with good and sufficient joint and several security, with preference and special mortgage privilege on the property sold, bearing interest at the rate of eight per cent. per annum, and to pay in cash an amount sufficient to cover all costs of suit, say $500 00, more or less, as also the official certificate of mortgages bearing on said property
46 in the name of Mrs. Louisa D. Minor, as hereinabove set forth, and then, after duly crying the aforesaid property and appurtenances, the same were adjudicated unto James E. Zunts, of the city of New Orleans, for the sum of ten thousand dollars, payable in twelve months from the said day of adjudication.

And the said James E. Zunts, the purchaser, has complied with the terms and conditions of the said sale, and has paid in cash five hundred dollars, being the costs of suit, as part of the aforesaid purchase price, and hath given his bond, condititioned as the law requires, for the balance of the aforesaid purchase price, viz, nine thousand five hundred

dollars, which bond is in the possession of the said U. S. marshal, and the amount of which bond, with the interest accrued thereon when collected, will be deposited by the said U. S. marshal or his legal assigns in the registry of the court, according to law, for the satisfaction,
47 as far as may be, of the aforesaid writ of fieri facias.

Now, therefore, know all men that I, F. J. Herron, the U. S. marshal aforesaid, in consideration of the premises, and by virtue of the laws in such case made and provided, have, by my proper authorization, caused the recorder of mortgages for the parish of Ascension, Louisiana, to erase, cancel, and annull all the mortgages recited in the aforesaid official certificate which are not already erased, cancelled, and annulled, inasmuch as they affect the aforedescribed property and appurtenances, a certificate of which cancellation is annexed to the aforesaid writ of fieri facias. And the said James E. Zunts, the purchaser aforesaid, hereby exonerates and releases the U. S. marshal aforesaid from the payment of any and all taxes which may be due at this time on the aforesaid property and appurtenances. And I do hereby
48 sell, transfer, convey, assign, and set over unto the aforesaid James E. Zunts, his heirs, administrators, executors, and assigns the aforedescribed property and appurtenances, subject to the terms and conditions above set forth: To have and to hold the aforesaid property and appurtenances, according to the aforesaid terms and conditions, unto the said James E. Zunts, his heirs and asssigns, to his and their use, benefit, and behoof forever.

In testimony whereof I grant these presents under my signature, as U. S. marshal aforesaid, in the said city of New Orleans, on this 16th day of July, A. D. one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

(Signed) F. J. HERRON,
U. S. Marshal for the District of Louisiana.

Executed in presence of—
(Signed) J. J. PREIS.
" J. DEVONSHIRE.

49 Ten dollars in U. S. internal revenue stamps affixed and cancelled.

United States circuit court, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I hereby certify that the foregoing deed of sale was this day duly recorded in this office in book of sales No. 2, folios 254, 255, 256, 257, 258, 259, 260, 261, and 262.

New Orleans, July 16th, 1868.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Received for record July 25th, 1868.
(Signed) C. A. YOUNGER, *Recorder.*

Recorded this day in book of conveyances No. 28, page 603 & seq., and in book of conventional mortgages No. 12, page 468 et seq.

Parish of Ascension, July 27th, 1868.
50 [SEAL.] (Signed) CHARLES A. YOUNGER,
Recorder.

[6-c. U. S. int. rev. stamps affixed and cancelled.]

RECORDER'S OFFICE, *Parish of Ascension:*

I, the undersigned recorder of mortgages in and for the parish of Ascension, duly commissioned and qualified, therein residing, do hereby certify that by virtue of an authorization to me directed (see book of miscellaneous acts, No. 3, page 236) by J. J. Preis, dep'ty U. S. marshal, district of Louisiana, I have this day erased, cancelled, and annulled the mortgages herein secondly, thirdly, fourthly, and fifthly mentioned above.

Parish of Ascension, July 27th, 1868.

[SEAL] (Signed) CHARLES A. YOUNGER,
Recorder.

[6-c. int. rev. stamps affixed and cancelled.]

Application for monition.—Filed July 17th, 1868.

51 U. S. circuit court for 5th circuit and district of Louisiana.

MRS. MARGARET R. DEAS, WIDOW, &C., *vs.* MRS. C. D. MONCURE & ALS., &C. } No. 3788.

D. Urban, esq., clerk of the U. S. circuit court for the above-named district:

SIR: Having become the purchaser, at a United States marshal's sale, of certain property sold under executory process issued in the above-entitled suit, the marshal's deed of conveyance to me being duly recorded in your office, I respectfully request that you do cause a monition to issue, in due form and according to law, calling upon all parties to contest my rights to hold the same to appear and establish the same within the time allowed by law, and failing in which they will be forever barred.

New Orleans, July 17th, 1868.

Very respectfully,

52 (Signed) JAMES E. ZUNTS,
Purchaser of the Property Aforesaid.

Publication of monition.—Extract from the New Orleans Republican, "a newspaper printed and published in New Orleans," of Friday August 21st, 1868.—*Filed December 8th*, 1868,* *and referred to in the U. S. marshal's certificate of publication of monition.—Filed Dec'r 8th*, 1868.*

"This reference approved."—D. Urban, clerk.

UNITED STATES OF AMERICA:

United States circuit court for the fifth circuit and district of Louisiana.

To all to whom these presents shall come, greeting:

Whereas James E. Zunts, having purchased at a sale made by the marshal of the United States for the district of Louisiana, the hereinafter described property, has applied to the clerk of the United States circuit court, in whose office the deed of sale was recorded, on the sixteenth day of July, 1868, for a monition or advertisement, in conformity to an act of the legislature of the State of Louisiana
53 entitled "An act for the further assurance of titles to purchasers at judicial sales," approved March 10th, 1834, and an act "relative to monitions and mode of proceeding," approved March 15th, 1855:

Now, therefore, know ye, and all persons interested herein are hereby cited and admonished, in the name of the United States of America and of the United States circuit court for the fifth judicial circuit and district of Louisiana, and in conformity to the act of the legislature of the State of Louisiana above cited, who can set up any right, title, or claim in and to the property hereinafter described, in consequence of any informality in the order, decree, or judgment of the court under which the sale was made, for any irregularity or illegality in the appraisements or advertisements, in time or manner of sale, or for any defect whatsoever, to show cause within thirty days from the day this monition
54 is first inserted in the public papers why the sale so made should not be confirmed and homologated.

The said property was sold by the United States marshal for the district aforesaid on the twenty-second day of May, 1868, by virtue of a decree of the above-named court, rendered on the twenty-seventh day of April, 1866, and signed on the 8th day of May, 1866, in a suit entitled "Margaret R. Deas, widow, etc., vs. Mrs. C. D. Moncure and als., children and heirs of Henry Doyal, deceased," No. 3788 of the docket of the said court, at which sale James E. Zunts became the purchaser for the price of ten thousand dollars, ($10,000,) payable in twelve months from the said day of sale, and for which, less $500 paid in cash as the costs of suit, he hath given a bond conditioned as the law requires.

Description of property as given in the judicial conveyance, viz:
55 A certain plantation situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, formerly known as the "Hard Times," but now known as the "Southwood" plantation, and bounded on the upper line by the line of the parish of Iberville, and on the lower by lands now or formerly belonging to S. R. Tillotson, and measures about twenty-eight and a half arpents front on the Mississippi River by eighty arpents in depth between diverging lines, with the opening thereto belonging, together with all the improvements thereon, as well as all the cattle, live stock, implements of husbandry, etc., of whatever kind or nature thereon or thereunto belonging, twenty-three mules, four carts, thirty-five plows, twenty thousand new bricks, and a lot of corn in barrels.

Clerk's office, New Orleans, July 17th, 1868.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Deputy Clerk.*

No. 937, July 18–29, Aug't 11–21.

56 *U. S. marshal's certificate of the publication of the clerk's monition.—Filed December 8th*, 1868.

United States circuit court for the 5th circuit and district of Louisiana.

J. J. Preis, deputy United States marshal for the district of Louisiana, being duly sworn, doth depose and say that D. Urban, clerk of the aforesaid court, did, on the 17th day of July, 1868, issue a monition in the suit No. 3788 of the docket of said court, entitled "Margaret R. Deas, widow, &c., vs. Mrs. C. D. Moncure & als., children and heirs of Henry Doyal, deceased," and that the said monition was published in the New Orleans Republican, in the city of New Orleans, on the 18th & 29th days of July and the 11th & 21st days of August, 1868, and the printed copy hereto annexed is a true copy of said publication.

(Signed) J. J. PREIS,
Dep'y U. S. Marshal Dist. of L'a.

57 Sworn to and subscribed before me this 24th day of August, 1868.

(Signed) F. B. VINOT,
Dy Clerk.

Opposition of Elmore & King to monition.—Filed August 11th, 1868.

To the hon. the circuit court of the United States for the fifth circuit, district of Louisiana:

To the monition taken out by James E. Zunts, in this honorable court, to confirm his title to certain property therein described, purchased by him at a sale made by the United States marshal for this district in the case of Margaret R. Deas, against Mrs. C. D. Moncure and others in this court, the property having been sold as belonging to Mrs. Louisa D. Minor, William A. Elmore and William W. King, composing the firm of Elmore & King, appear, make opposition upon the following grounds, to wit:

1st. The property was not advertised and sold according to law,
58 neither at the first offering by the marshal for cash nor at the second sale on twelve months' credit, at which Zunts became the purchaser. The property was not advertised for sale in the parish in which it was situated, to wit, in the parish of Ascension, in any manner whatever, although there was a newspaper published in the parish in which the sale could have been legally advertised. It was not advertised in French.

2d. The first offering having been illegal, the property could not be legally sold on twelve months' credit, nor could it be legally sold without thirty days' advertisement. The second sale was made before there had been thirty days' advertisement.

3d. At the second offering of the property for sale by the marshal on twelve months' credit, the property was not offered or sold on twelve months' credit, but was offered and sold for five hundred dollars cash, and on the balance of the price at twelve months' credit.

59 4th. The property was not described at the sale with sufficient certainty. The quantity of land sold was not given, nor the degrees of divergance of the side lines. Owing to these illegalities and informalities, the property was sacrificed for less than one-fourth of its value.

The opponents allege they are mortgage creditors of the said Mrs. L. D. Minor for one thousand dollars and interest, as appears from the certificate of mortgages on file in the case, which mortgage debt was secured by special mortgage on the property sold; that the sale made by the marshal leaves nothing for their claim, and their right of mortgage is thereby defeated. They will probably lose their debt, unless they can get the sale set aside.

Wherefore they pray that the application of the said Zunts for
60 the confirmation of his title be rejected and the said sale declared null and void, and the property declared to be still subject to their mortgage, &c., &c., for trial by jury, &c., &c.

(Signed) ELMORE & KING.

61 *Opposition of Dunlop and McCance to monition.—Filed August 11th, 1868.*

To the hon. the circuit court of the United States for the fifth circuit, district of Louisiana:

To the monition taken out by James Zunts to confirm his title to certain property therein described, purchased by him at a sale made by the United States marshal in the case of Mrs. Margaret R. Deas vs. Mrs. C. D. Moncure & others, in this honorable court, the property so purchased having been sold as the property of Mrs. Louisa D. Minor, widow of John S. Minor, deceased, James Dunlop and Thomas W. McCance, as surviving partners of Dunlop, Moncure & Co., and as executors of Henry W. Moncure, a deceased member of said firm,
62 who both are citizens of the State of Virginia, appear and make opposition to the confirmation of said monition, upon the following grounds, to wit:

1st. At the first offering by the marshal of the said property for sale for cash, on the execution issued in the case, and also at the second offering of said property for sale on twelve months' credit, the property had not been advertised for sale by the marshal in the manner required by law. At neither of those offerings for sale had the property been advertised in any manner in the parish in which it was situated, to wit, the parish of Ascension, although there was a newspaper published in the parish in which the advertisement could have been legally made. The sale was not in any manner advertised in French.

2d. The first offering of the property for sale by the marshal having been illegal, the property could not be legally sold on twelve
63 months' credit, nor could it be legally sold by the marshal without thirty days' advertisement.

3d. At the second offering of the property for sale by the marshal, it was not offered or sold on twelve months' credit, but was offered and sold for five hundred dollars cash, and the balance of the price only was on twelve months' credit.

4th. The property sold was not described with sufficient accuracy. The quantity of land sold was not mentioned, nor the degrees of divergance of the side lines given, so that the quantity might be ascertained.

Opponents allege that they are the holders and owners of four promissory notes, all dated February 21st, 1867, bearing five per cent. interest from the 7th of August, 1866, one for two thousand dollars, due February, 1868; one for three thousand dollars, due January 1st, 1869; one for four thousand dollars, due January 1st, 1870; and another, for six thousand dollars, due February 1st, 1871. All of said notes
64 were drawn by said Mrs. L. D. Minor, payable to her own order, and by her endorsed in blank. The said notes were secured by mortgage upon the said property sold by the marshal as the property of the said Mrs. L. D. Minor.

Opponents allege that, owing to the illegalities and informalities of the said marshal's sale, the property did not bring one-fourth of its value, and left nothing for the payment of the debt due to those opponents, whereby they have lost the benefit of their mortgage if the said sale should be confirmed.

Opponents allege they have suffered great loss and damage from the said sale, to wit, the amount of said notes.

In confirmation of the foregoing allegations, opponents refer to the said mortgage to pay the said notes, executed before Felix Grima,

notary public, in this city, the 21st of February, 1867, and also to the monitions published in the case.

Wherefore opponents pray that the confirmation of said title
65 be refused; that the said sale be declared null and void, and the said property be declared subject to the mortgage of these opponents; and for all other relief in the premises, &c., &c., and for trial by jury.

(Signed) ELMORE & KING,
A. L. TISSOT,
Att'ys for Opponents.

Opposition of Mrs. L. D. Minor to monition.—Filed August 11th, 1868.

To the honorable the circuit court of the United States for the fifth circuit, district of Louisiana:

To the monition taken out in this honorable court by James E. Zunts, to confirm his title to certain property therein described, purchased by him at a sale by the United States marshal, made in the case of Mrs. Margaret R. Deas against Mrs. C. D. Moncure and others, in this
66 court, Louisa D. Minor, widow of John S. Minor, deceased, and owner of the property sold, respectfully appears, makes opposition thereto upon the following grounds, to wit:

1st. The said monition has not been published or advertised according to law.

2d. At the first offering of the marshal of the sale of said property for cash, on the execution in the case, the property was not offered for sale according to law. The said property was not advertised for sale in any manner in the parish in which it was situated, to wit, the parish of Ascension. It was not advertised in any newspaper published in said parish, although there was a newspaper published in the parish. It was not advertised in French, as the law requires. Notice of the sale was not posted at the court-house door, or the church door, or any other public place in the parish, for the time and in the manner directed
67 by law. The said property, not having been legally offered for sale by the marshal at the first offering, could not be legally sold on twelve months' bond or twelve months' credit. The first offering being illegal, the property could not be again offered for sale without advertising the sale for thirty days.

3d. At the second offering of the property for sale, on twelve months' bond or twelve months' credit, at which sale the said Zunts became the purchaser, the same illegalities and informalities in regard to the advertising occurred that are above set forth in regard to the advertising at the first sale. The sale was not advertised in any manner in the parish, neither in a newspaper published in the parish, although there was a newspaper published therein, in which the advertisement could
68 have been legally made, nor by posting on the court-house door, nor church door, or any other public place in the parish.

4th. At the second offering of the property for sale on twelve months' credit, it was not offered or sold on twelve months' credit, but was offered and sold for five hundred dollars, payable at once in cash, and the balance only of the price on twelve months' credit.

5th. The property was not described with sufficient accuracy. The quantity was not stated nor the degree of the divergance of the side lines given.

The opponent alleges that, owing to the above illegalities and informalities in the sale, the property was sacrificed for less than one-fifth of

its real value; that the property was adjudicated to said Zunts for the sum of ten thousand dollars, while the buildings, improvements, and machinery alone on the place cost over one hundred thousand
69 dollars, besides the value of the very large and highly improved tract of land; that she has been greatly injured thereby.

Wherefore she prays that the said Zunts be cited to answer this opposition, and that his application for the confirmation of his title be rejected; that the said sale be declared null and void; and for all other relief in the premises; and further, that this case be tried by a jury, &c., &c.

(Signed) ELMORE & KING, *Att'ys.*

Supplemental opposition to monition by Mrs. L. D. Minor.—Filed August 14th, 1868.

To the honorable the circuit court of the United States for the fifth circuit, district of Louisiana:

To the monition taken out by James E. Zunts to confirm his title to property purchased by him at U. S. marshal's sale on execution
70 in the case of Mrs. Margaret R. Deas vs. Mrs. C. D. Moncure and others in this honorable court, Mrs. L. D. Minor, in addition to the grounds of opposition already filed by her, files the following supplemental ground of opposition thereto:

She alleges that at the marshal's sale, neither at the first or second offering was the property offered or sold according to the requirements of the constitution of the State of Louisiana, especially the article one hundred and thirty-two of said constitution, and that the property was, therefore, illegally sold, and should be annulled.

(Signed) ELMORE & KING,
Att'ys for Opponent.

Additional supplemental opposition of Mrs. L. D. Minor to monition of Zunts, and the order thereon.—Filed December 11th, 1868.

To the honorable the circuit court of the United States for the
71 fifth circuit, district of Louisiana:

To the monition taken out by James E. Zunts to confirm title to certain property therein described, purchased by him at U. S. marshal's sale in case of Mrs. M. R. Deas vs. Mrs. C. D. Moncure et al., and numbered 3788 on the docket of this honorable court, Mrs. L. D. Minor, after leave had and obtained from this honorable court, files the following additional supplemental ground of opposition thereto:

She alleges that the appraisers appointed to appraise the plantation were not sworn according to law, and the failure so to swear them is sufficient to annul the sale.

Wherefore she prays for the annulment of said sale, and for all other relief.

(Signed) ELMORE & KING,
For Mrs. L. D. Minor.

Let this additional and supplemental opposition be filed.
72 December 11th, 1868.

(Signed) E. H. DURELL, *Judge.*

Marshal's return.

Received December 11th, 1868, by the U. S. marshal, and, on same day of December, 1868, served copy of within additional and supplemental opposition on James E. Zunts, named herein, personally, at City Hotel, corner Camp and Common streets, in this city.

New Orleans, December 14th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Motion and order fixing oppositions.—Extract from the minutes of Wednesday, the 18th of November, 1868.

MRS. W'OW M. DEAS ET AL.
vs.
CAROLINE D. MONCURE ET ALS. } No. 3788.

On motion of Elmore and King, of counsel for Mrs. Louisa D.
73 Minor, Dunlop, Moncure & Co., and others, upon suggesting to the court that James E. Zunts has taken out a monition to confirm his title to certain property purchased by him at marshal's sale in the above case, and that opposition thereto has been filed by said Mrs. Minor, Dunlop, Moncure & Co., and others, it is ordered by the court that said case be fixed for trial on the 9th day of December next, and that the said Zunts be notified hereof.

Marshal's return.

Received November 19th, 1868, by the U. S. marshal, and, on 20th day of November, 1868, served copy of within motion and order on J. E. Zunts, named herein, in hands of R. A. Morse, at the City Hotel, in this city.

New Orleans, November 20th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

74 *Order of continuance.—Extract from the minutes of Wednesday, December 9th*, 1868.

MRS. W'OW M. DEAS
vs.
MRS. MONCURE & ALS. } No. 3788.

By consent of counsel in open court, this cause is continued till the 16th instant, at 11 a. m.

Hearing and continuance.—Extract from the minutes of Wednesday, December 16th, 1868.

MRS. M. DEAS, &C.,
vs.
MRS. MONCURE, &C. } No. 3788.

This cause came up on the oppositions to the homologation of the monition—Elmore & King, for opponents, Campbell, Spofford and Campbell, for J. E. Zunts, purchaser—when the following persons were called and sworn on the jury, to wit:

G. A. Fosdick, W'm Vegir, Tho's L. Wibray, A. Parle, Eugene Rillieux, E. H. Bostick, A. M. Victor, A. Kearney, J. Caulfield, J. H. Polhous, Eugene V. Macarty.

75 And, after hearing the pleadings, evidence, and argument, the cause was continued till Saturday, 19th instant, at 11 a. m.

Note of evidence.—Filed December 16th, 1868.

Circuit court of the United States, district of Louisiana.

MRS. M. DEAS, &C., *vs.* MRS. MONCURE & ALS. } No. 3788.

Opponent offered in evidence the testimony of C. A. Johnson, marked "A;" marshal's return, "B," and document C; the first rules of the rules of the court, adopted 12th December, 1865.

Baron Boisfontaine sworn for Zunts.

J. J. Preis sworn for Zunts.

Zunts offers the deed to Zunts, "D," the monitions, and the record in the case.

76 *Testimony of C. A. Johnson, marked "A," offered by opponents, and filed 16th December, 1868.*

U. S. circuit court, district of Louisiana.

MARGARET R. DEAS *vs.* CAROLINE D. MONCURE ET ALS. } No. 3788.

The undersigned, C. A. Johnson, a witness for the opponents, being duly sworn, deposes and says that there is a newspaper published in the town of Donaldsonville and parish of Ascension; that said newspaper has been regularly published for the last two years and more; and that the same is printed in the English and French languages, and appears once a week with great regularity; it is called "The Drapeau."

December 19th, 1868.

(Signed) CHARLES ANDREW JOHNSON.

Admitted as evidence.

(Signed) J. A. CAMPBELL, *For Pl'ff.*

77 I concur in the above statement, as the facts there stated are within my personal knowledge.

(Signed) JOHN H. ILSLEY, JR.

Admitted in evidence in this case.

(Signed) J. A. CAMPBELL, *For Pl'ff.*

Marshal's return, marked B, offered by opponents.

To be found transcribed at page 18.

Document C, offered by opponents, and filed December 16th, 1868.

U. S. circuit court.

MRS. M. DEAS, WIDOW, &C., }
vs. }
MRS. MONCURE ET AL. }

On the trial of opposition to monition.

The certificate of mortgages annexed to the marshal's return, not being among the papers in the case, it is admitted that Dunlop, Moncure & Co. were mortgage creditors of the property sold by the
78 marshal for ($15,000) fifteen thousand dollars and interest, and that Elmore & King were mortgage creditors for one thousand dollars, both of which were subsequent in rank to the seizing creditor, as stated on the certificate of mortgages produced by the marshal.

It is also admitted that the property sold by the marshal, and purchased by Zunts, was never advertised in the French language.

(Signed) J. A. CAMPBELL,
For Pl'ff Zunts.

Rule 1st of the rules of U. S. circuit court, adopted 12th December, 1865, offered by opponents.

RULE 1ST. The mode of proceeding in civil causes, those of admiralty jurisdiction and at the instance side of the court excepted, shall be conformable to the provisions of the code of practice of the State of
79 Louisiana, and the acts of the legislature heretofore passed amendatory thereto, so far as the same are not repugnant to any law of the United States applicable to said State or to the rules of the court.

Deed, marked D, offered by Zunts.

To be found transcribed at page 32.

The monition offered by Zunts.

To be found transcribed at page 52.

Hearing and continuance.—Extract from the minutes of Saturday, December 19th, 1868.

MRS. M. DEAS, &C., }
vs. } No. 3788.
MRS. MONCURE & ALS. }

This cause was called pursuant to continuance—Elmore & King for opponents to homologation of the monition; Campbell, Spofford & Campbell for J. E. Zunts, purchaser—and the jurors empanelled on
80 the 16th instant being called, the following answered to their names: Th's L. Wibray, E. H. Bostick, A. M. Victor, Alf. Kearney, L. D. Larrien, J. H. Polhaus, Eug. V. Macarty, when the counsel agreed, in open court to try the causes with the seven jurors present, and the trial proceeded; and after hearing argument, the at-

torneys for the plaintiffs in opposition, Messrs. Elmore & King, having submitted to the court certain charges in writing, and prayed that the same should be given to the jury, the court took time to consider, and directed that the cause be continued till the 11th January, 1869, at 11 a. m., and that the jurors be present in court on the aforesaid day and hour.

Bill of exceptions of opponents.—Filed December 19th, 1868.

U. S. circuit court.

MRS. DEAS
vs.
MRS. MONCURE & OTHERS. } No. 3788.

"On the trial of the oppositions to monition applied for by J. E. Zunts."

81 Be it remembered that, during the trial of the above cause, the counsel for J. E. Zunts called to the stand Preis, witness, and asked the said witness what had been the practice of the marshal's office in reference to advertisements of judicial sales in French. Whereupon the counsel for the oppositions objected to any such testimony, upon the ground that a practice of the marshal's office contrary to law could not change the law or affect the case; that the law regulated the manner of advertising judicial sales; that the testimony, therefore, was irrelevant; it was calculated to mislead the jury, and should not be received. The court overruled these objections, and permitted the testimony of the witness as to the practice of the marshal's office not to advertise in French to go to the jury as legal evidence in the case,
82 to which ruling of the court the counsel for opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURELL, *Judge.*

Verdict and judgment.—Extract from the judgment docket.

United States circuit court, fifth circuit and district of Louisiana, November term, 1868.

NEW ORLEANS, *Monday, January 11th*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

MARGARET R. DEAS, WIDOW, &C.,
vs.
MRS. C. D. MONCURE & ALS. } No. 3788.

This cause was resumed pursuant to continuance—Elmore & King for opponents to the homologation of the monition; Campbell, Spofford & Campbell for J. E. Zunts, purchaser—and the seven jurors empanelled being all present, except Alfred Kearney, who was
83 reported sick, the counsel agreed to try the cause with the six jurors present; and, after receiving a charge from the court, Thomas L. Wibray was appointed foreman of the jury, and they retired to consider on their verdict; and, after a short deliberation, they returned into court, and delivered the following verdict, to wit:

"NEW ORLEANS, *January 11th*, 1869.

"We, the jury, find in favor of J. E. Zunts, and for confirming the monition.

"THO'S L. WIBRAY, *Foreman.*"

Whereupon it is ordered that the verdict be recorded; and in accordance therewith it is hereby ordered, adjudged, and decreed that the several oppositions of Louisa D. Minor, Dunlop and McCance, and Elmore & King be dismissed. And it appearing that James E. Zunts, purchaser of the following-described property, sold by the mar-
84 shal under an execution from this court as the property of Louisa D. Minor, viz: "A certain plantation situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, formerly known as the 'Hard Times,' but now known as the Southwood plantation, and bounded on the upper line by the line of the parish of Iberville, and on the lower line by lands now or formerly belonging to S. R. Tillotson, and measures about twenty-eight and one-half arpents front on the Mississippi River by eighty arpents in depth between diverging lines, with the opening thereto belonging, together with all the buildings and improvements thereon, as well as all the cattle, live stock, implements of husbandry of whatsoever nature thereon or thereunto belonging, twenty-three mules, four carts, thirty-five plows, twenty thousand new bricks, and a lot of corn in barrels," had applied for and obtained a monition thereon from this court; and the same
85 having been produced, and it appearing that it had been published in the papers selected for the publication of judicial advertisements from this court for the full term prescribed of 30 days, and that all the notice required by law has been given; that the property has been accurately described therein, and that the said purchaser has complied with the terms and conditions of the sale by the marshal; that the said sale was duly and regularly made according to the rules and practice of this court and the requisitions of the law—

It is further adjudged and decreed that the said marshal's sale be, and the same is hereby, confirmed and homologated, and that the opponents pay costs of their respective oppositions, for which execution may issue.

Judgment rendered January 11th, 1869.
Judgment signed January 15th, 1869.

(Signed) E. H. DURELL, *Judge.*

86 *Opponents' bill of exceptions.—Filed January 19th*, 1869.

United States circuit court for the fifth circuit, district of Louisiana.

MRS. M. S. DEAS
vs.
MRS. MONCURE AND OTHERS. } No. 3788.

On the trial of the several oppositions made by Mrs. L. D. Minor, Dunlop, Moncure & Co., and Elmore & King, to the monition issued in the case by James E. Zunts.

Be it remembered that, during the trial of the above oppositions, the record of the proceedings in the above case, in reference to the sale of property by the U. S. marshal, and his return on the execution issued in the case, and also the monition and proceedings thereon, and also the rule of the court adopted the 12th December, 1865, as follows: "Rule 1. The mode of proceeding in civil causes, those of admiralty juris-

87 diction and instance side of the court excepted, shall be conformable to the provisions of the code of practice of the State of Louisiana and the acts of the legislature heretofore passed amendatory thereto, so far as the same are not repugnant to any law of the United States, applicable to said State and the rules of this court," having been offered and received in evidence, and which are herein referred to and incorporated into this bill of exceptions as a part thereof; it appearing from said record that the sale of the property in question by the marshal was not a proceeding in admiralty, or on the instance side of the court, but a sale on execution issued in a civil suit at law of property situated in the parish of Ascension, in this State, and that there had been no newspaper advertisement in that parish, the counsel for the opponents requested the court to charge the jury—

88 That, to constitute a valid sale by the marshal of the property in dispute, he was bound by law to have advertised the sale of the property in the parish of Ascension, in which it was situated.

This charge the court refused to give, and charged the jury that the United States marshal was not governed by the laws of the State of Louisiana in reference to the place of advertising judicial sales.

To which refusal of the court to charge as requested, as well as to the charge given, the counsel for the opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

NOTE.—It was in evidence that newspapers had been selected by the Clerk of the House of Representatives, and were notified by the judge of this court under the act of March 2d, 1867, and that since that

89 date judicial advertisements from the marshal's office had been advertised in those newspapers only, and that this is the first case that has arisen of opposition thereto.

(Signed) E. H. DURELL, *Judge.*

Opponents' bill of exceptions.—Filed January 19th, 1869.

MRS. MARGARET S. DEAS *vs.* MRS. MONCURE & OTHERS. } No. 3788.

United States circuit court for the fifth circuit, district of Louisiana.

On the trial of the several oppositions of Mrs. L. D. Minor, Dunlop, Moncure & Co., and Elmore and King, to the monition issued in the above case by James E. Zunts.

Be it remembered that, during the trial of the above oppositions, it appearing from the evidence that the property sold by the marshal

90 had never been advertised in the French language, the counsel for the opponents requested the court to charge the jury that the property sold must have been advertised in the French language to render the sale valid.

The court refused to give the charge, and charged the jury that it was not necessary there should have been any advertisement in the French language.

To which refusal of the court, and to the charge given, the counsel for opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURELL, *Judge.*

Opponents' bill of exceptions.—Filed January 19th, 1869.

MRS. MARGARET S. DEAS
vs.
MRS. MONCURE AND OTHERS. } No. 3788.

United States circuit court for the fifth circuit, district of Louisiana.

91 On the trial of the several oppositions made by Mrs. L. D. Minor, Dunlop, Moncure & Co., and Elmore & King, to the monition taken by James E. Zunts in the above case.

Be it remembered that, during the trial of the above oppositions, it appearing from the evidence that there was a newspaper published in the parish of Ascension, both in the English and French languages, and that there had been no advertisement of the property in question sold by the marshal on execution in the parish of Ascension, but that the property had been advertised only in the English language in two newspapers published in New Orleans; it further appeared that this had been the practice, since the act of Congress of March, 1867, of the marshal, the counsel for the opponents requested the court to charge—

92 That, to constitute a legal advertisement of the property in question sold by the marshal, according to the laws of Louisiana, the advertisement must have been published in a newspaper located in the parish of Ascension, where it was situated, or, if this could not be done, by posting the advertisement on the court-house door, and at two other public places in different parts of the parish.

This charge the court refused to give, and charged the jury that an advertisement of the property sold by the marshal in newspapers published in New Orleans selected under the act of Congress by the Clerk of the U. S. House of Representatives was a sufficient advertisement in a newspaper, under the law.

To the refusal of the court to charge as requested, and to the charge made, the counsel for the opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURELL, *Judge.*

93 *Opponents' bill of exceptions.—Filed January 19th, 1869.*

MRS. MARGARET S. DEAS
vs.
MRS. MONCURE & OTHERS. } No. 3788.

United States circuit court for the fifth circuit, district of Louisiana.

On the trial of the several oppositions of Mrs. L. D. Minor, Dunlop, Moncure & Co., and Elmore & King, to the monition issued in this case by James E. Zunts.

Be it remembered, that during the trial of the above oppositions, that the property in controversy, when sold by the marshal, was advertised only in newspapers published in the parish of Orleans, one of which was selected by the Clerk of the U. S. House of Representatives under the 7th section of the act of Congress approved March 2nd, 1867, entitled "An act making appropriations for sundry civil expenses

94 of the government for the year ending June 30th, 1868, and for

other purposes," the counsel for the opponents requested the court to charge the jury—

That the seventh section of the act of Congress approved March 2nd, 1867, entitled "An act making appropriations for sundry civil expenses of the government for the year ending June 30th, 1868, and for other purposes," is not repugnant to the laws of the State of Louisiana relative to the advertisement of judicial sales of property sold under execution, and does not repeal those laws.

This charge the court refused to give, and charged the jury that said act of Congress was repugnant to the laws of the State of Louisiana relative to such advertisements, and it appeared it had been the practice of the marshal so to advertise since the act of 2nd March, 1867.

To this refusal to charge, and to the charge given, the counsel
95 for the opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURELL, *Judge.*

Opponents' bill of exceptions.—Filed January 19th, 1869.

MRS. MARGARET S. DEAS *vs.* MRS. MONCURE & OTHERS. } No. 3788.

United States circuit court for the fifth circuit, district of Louisiana.

On the trial of the several oppositions made by Mrs. L. D. Minor, Dunlop, Moncure & Co., and Elmore & King, to this monition, issued by James E. Zunts in the above case.

Be it remembered that, during the trial of the above oppositions, it appearing that the legality of the advertisements of the property sold by the marshal, and in controversy in this case, was endeavoured
96 to be maintained under the act of Congress approved March 2nd, 1867, entitled "An act making appropriations for sundry civil expenses of the government for the year ending June 30th, 1868, and for other purposes," the counsel for the opponents requested the court to charge the jury—

That if said act of Congress be so construed as to repeal the laws of Louisiana in reference to the advertisement of property sold by the U. S. marshal in judicial sales upon executions, then the said act is contrary to the Constitution of the United States, especially the preamble thereof, and is consequently null and void, and can have no legal effect.

The court refused to give the charge as requested.

To which refusal the counsel for the opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

NOTE.—It was in testimony that two papers had been selected
97 for advertisements under that act, and notified to the court, and that since the date of the act all advertisements by the marshal have been published in these papers, and that it had been the practice to do so, and that advertisements had not been made in other papers.

(Signed) E. H. DURELL, *Judge.*

Opponents' bill of exceptions.—Filed January 19th, 1869.

MRS. M. S. DEAS
vs.
MRS. MONCURE & OTHERS. } No. 3788.

United States circuit court for the fifth circuit, district of Louisiana.

On the trial of the oppositions made by Mrs. L. D. Minor, Dunlop, Moncure & Co., and Elmore & King, to the monition issued in the case by James E. Zunts.

Be it remembered that, during the trial of the above oppositions,
98 the court having charged the following as a rule of the court, adopted on the 12th December, 1865, to wit:

"The clerk shall not be compelled to file or docket any suit or to issue any process, nor the marshal to serve and execute the same, until a deposit of a sum sufficient to cover the immediate costs to accrue therein shall have been made."

And it appearing that the validity of the sale which was in controversy in the suit was one made by the U. S. marshal on execution at a second offering of the same, the property not having been adjudicated at the first offering for cash, in consequence of there having been no bid amounting to two-thirds of the appraised value, the counsel for the opponents requested the court to charge—

That, at the second offering, the property should have been sold at twelve months' credit, and that the marshal could not legally require a portion of the price to be paid in cash; that his requiring five
99 hundred dollars, more or less, in cash, to pay costs, as appeared from the record, was illegal, and rendered the sale invalid.

This charge the court refused to give, the practice of this court being otherwise, to which refusal the counsel for the opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURELL, *Judge.*

Opponents' bill of exceptions.—Filed January 19th, 1869.

MRS. M. S. DEAS
vs.
MRS. MONCURE & OTHERS. } No. 3788.

United States circuit court for the fifth circuit, district of Louisiana.

On the trial of the oppositions made by Mrs. L. D. Minor, Dunlop, Moncure & Co., & Elmore & King, to the monition issued in the above case by J. E. Zunts.

100 Be it remembered that, during the trial of the above oppositions, the counsel for the opponents requested the court to charge the jury that the description of the property contained in the advertisements of the sale by the marshal was not sufficiently definite. The description was as follows in the advertisement:

"A certain plantation situated on the left bank of and fronting on the Mississippi River, in the parish of Ascension, in this State, formerly known as the Hard Times, but now known as the Southwood plantation, and bounded on the upper line by the line of the parish of Iberville, on the lower line by lands now or formerly belonging to S. R.

Tillotson, and measures about twenty-eight and a half arpents *front on the Mississippi River by eighty arpents* in depth between diverging lines, with the opening thereto belonging, together with all the buildings and improvements thereon, as well as the cattle and live stock, implements of husbandry, &c., &c., of whatever kind or nature thereon or thereunto belonging, twenty-three mules, four carts, thirty-five plows, twenty thousand new bricks, and a lot of corn in barrels."

"This reference approved."

101 This charge the court refused to give, and charged that the description was sufficiently accurate.

To this refusal, and the charge given, the counsel for the opponents excepted, and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURELL, *Judge.*

Opponents' bill of exceptions.—Filed January 19th, 1869.

U. S. circuit court.

MRS. M. S. DEAS
vs.
MRS. MONCURE & OTHERS. } No. 3788.

On the trial of the several oppositions made by Mrs. L. D. Minor, Dunlop, Moncure & Co., & Elmore & King, to the monition issued in this case by J. E. Zunts.

102 Be it remembered that, during the trial of the above oppositions, it appearing that the property in controversy was a plantation containing many hundreds of acres, which had been sold by the marshal on execution in block, the counsel for the opponents requested the court to charge that a sale thus made in block was in violation of article one hundred and thirty-two of the State constitution, and the sale was void.

The court refused to give the charge, to which refusal to charge the counsel for opponents excepted and tendered this bill of exceptions, which they pray may be signed and sealed.

(Signed) E. H. DURRELL, *Judge.*

Petition for writ of error of Mrs. L. D. Minor, opponent.—Filed January 20th, 1859.

To the hon. the circuit court of the United States for the fifth circuit, district of Louisiana.

103 In the matter of Mrs. M. S. Deas vs. Mrs. Moncure and others, on the trial of the opposition made by Mrs. L. D. Minor to the monition issued in the case by James E. Zunts, judgment was rendered against the said Mrs. Minor on the 11th January, 1869, and signed on the 15th of said month.

The said Mrs. S. D. Minor respectfully represents that there was error in the said judgment, which will work to her irreparable injury, unless she can be relieved therefrom by a writ of error to the Supreme Court of the United States.

Wherefore she prays, the annexed bond being considered, she be allowed a writ of error in the case, &c., &c., &c.

(Signed) ELMORE & KING,
Atty's for Mrs. Minor.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the
104 first Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

New Orleans, January 20th, 1869.

(Signed) E. H. DURELL, *Judge.*

Petition for writ of error of Dunlop, Moncure & Co., opponents.—Filed January 20th, 1869.

To the hon. the circuit court of the United States for the fifth circuit, district of Louisiana.

In the matter of Mrs. M. S. Deas vs. Mrs. Moncure and others, on the trial of the opposition, filed by Dunlop, Moncure & Co., to the monition taken in the case by James E. Zunts, judgment against the said Dunlop, Moncure & Co., was rendered on the 11th of January, 1869, and signed on the 15th of the same month.

The said Dunlop, Moncure & Co. respectfully represent that there was error in the said judgment, which will work to them irre-
105 parable injury, unless they can be releived therefrom by writ of error.

Wherefore they pray, the annexed bond being considered, they may be allowed a writ of error to correct the errors in said judgment, &c., &c., &c.

(Signed) ELMORE & KING,
Att'ys for Dunlop, Moncure & Co.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the first Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security conditioned as the law directs.

New Orleans, January 20th, 1869.

(Signed) C. H. DURELL, *Judge.*

Bond for writ of error.—Filed January 29th, 1865.

United States circuit court.

106 MRS. M. S. DEAS *vs.* MRS. MONCURE & OTHERS. } No. 3788.

Know all men by these presents that we, Mrs. S. D. Minor, as principal, and J. S. Tissot, as surety, are held and firmly bound unto James E. Zunts in the full and just sum of five hundred dollars, to be paid to the said James E. Zunts, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twentieth day

of January, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein the said Mrs. L. D. Minor was plaintiff in a certain opposition filed against a monition issued in
107 the case of Mrs. Deas vs. Mrs. Moncure and others, by said James E. Zunts, judgment was rendered against the said Mrs. L. D. Minor, and the said Mrs. L. D. Minor having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said James E. Zunts, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Mrs. L. D. Minor shall prosecute her writ to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) L. D. MINOR. [L. S.]
108 (Signed) J. L. TISSOT. [L. S.]

Sealed and delivered in the presence of—
(Signed) W'M W. KING.

Bond for writ of error.—Filed January 20th, 1869.

Know all men by these presents that we, Dunlop, Moncure & Co., as principals, and J. L. Tissot, as surety, are held and firmly bound unto James E. Zunts in the full and just sum of five hundred dollars, to be paid to the said James E. Zunts, his certain attorney, executor, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severaly, by these presents, sealed with our seals, and dated this twentieth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States, fifth
109 judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Mrs. Deas vs. Mrs. Moncure and others, Dunlop, Moncure & Co., were plaintiffs, as opponents to a monition issued therein by said James E. Zunts, judgment was rendered against the said Dunlop, Moncure & Co., on their opposition and in favor of the said Zunts, and the said Dunlop, Moncure & Co. having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said James E. Zunts, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Dunlop, Moncure & Co. shall prosecute their writ to effect, and
110 answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) DUNLOP, MONCURE & CO.,
P. P. J. L. TISSOT. [L. S.]
(Signed) J. L. TISSOT. [L. S.]

Sealed and delivered in presence of—
(Signed) W'M W. KING.

United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 110 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the several oppositions of Mrs. Louisa D. Minor, Dunlop, Moncure and Company, and Elmore & King, to the monition issued by James E. Zunts, in the case of Margaret R. Deas, widow, &c., versus Mrs. Caroline D. Moncure & als., heirs of Henry Doyal, No.
111 3788 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 6th day of September, A. D. 1869.

[SEAL.] D. URBAN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

{ SEAL'S } Given under my hand and seal, at the city of New Or-
{ PLACE. } leans, in said district, this 6th day of September, A. D. 1869.

E. H. DURELL, *Judge.*

[Five-cent internal revenue stamp affixed and canceled.]

112 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between Mrs. Louisa D. Minor and James E. Zunts, on an opposition filed by said Mrs. Minor to a monition taken out by the said Zunts in the case of Mrs. M. S. Deas against Mrs. Moncure & others, and of the docket of said circuit court No. 3788, a manifest error hath happened to the great damage of the said Mrs. Louisa D. Minor, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court of the United States, this 20th of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

113 (Indorsed:) United States circuit court. No. 3788. Mrs. M. S. Deas vs. Mrs. Moncure & others. Writ of error.
Filed Jan'y 20th, 1869.

F. B. VINOT, D'y *Clk.*

114 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between Dunlop, Moncure & Co., and James E. Zunts, on an opposition made by said Dunlop, Moncure & Co. to a monition taken in the case of Mrs. M. S. Deas against Mrs. Moncure & others, to confirm a marshal's sale of property made in said case, a manifest error hath happened, to the great damage of the said Dunlop, Moncure, & Co., as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 20th of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

115 (Indorsed:) United States circuit court. No. 3788. Mrs. M. S. Deas vs. Mrs. Moncure & others. Writ of error.
Filed Jan'y 20th, 1869.

F. B. VINOT, *D'y Clk.*

116 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to James E. Zunts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Mrs. Louisa D. Minor, opponent to a monition taken out by said James E. Zunts, is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not

be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

117 (Indorsed:) United States circuit court. No. 3788. Mrs. M. S. Deas vs. Mrs. Moncure & als. Citation in error to James E. Zunts.

Marshal's return.

Received Jan. 21, 1869, by the U. S. marshal, and, on 27 day of Jan'y, '69, served copy of within citation in error on James E. Zuntz, named herein personally, on banquet, opposite cors. St. Anthony's alley and Chartres street, in this city.

J. W. SAWYER,
D'y U. S. Marshal.

NEW ORLEANS, *Jan'y* 27, '69.

118 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to James E. Zunts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Dunlop, Moncure & Co., opponents to a monition taken out by said James Zunts, are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] E. H. DURELL, *Judge.*

(Indorsed:) United States circuit court. No. 3788. Mrs. M. S. Deas vs. Mrs. Moncure & als. Citation in error to James E. Zunts.

Marshal's return.

Received, Jan. 21, 1869, by the U. S. marshal, and, on 27 day of Jan'y, '69, served copy of within citation in error on James E. Zuntz, named herein, personally, on banquet, opposite cor. St. Anthony's alley and Chartres street, in this city.

New Orleans, Jan'y 27, '69.

J. W. SAWYER, *D'y U. S. Marshal.*

(Indorsement on cover:) No. 326. Dunlop, Moncure & Co., and Louisa D. Minor, plaintiffs in error, vs. James E. Zunts. Louisiana C. C. U. S.

Filed 6th December, 1869.

SUPREME COURT OF THE UNITED STATES.

DUNLOP, MONCURE & Co. and LOUISA D. MINOR, plaintiffs in error,

against

JAMES E. ZUNTS, defendant in error.

In error to circuit court of United States for district of Louisiana.

SUPREME COURT OF THE UNITED STATES.

DUNLOP, MONCURE & Co. and LOUISA D. MINOR,	plt'fs in error,	In error to circuit court of United States for district of Louisiana.
against		
JAMES E. ZUNTS,	def't in error.	

ABSTRACT OF THE CASE.

After judgment against four persons as heirs of H. Doyal (p. 5), execution thereon, (pp. 5, 6), was returned by the marshal (pp. 6, 7), with document marked A (p. 8), and the inventory marked B (p. 9), whereby it appears, that on the 14th or the 16th of March, 1868, the marshal demanded of Mrs. Louisa D. Minor one of the four heirs payment of one-fourth of the judgment, to wit: $5,400 with interest and costs, and forthwith seized and took into possession a certain plantation with all the live stock, cattle, implements of husbandry, &c., thereunto belonging. Although the notice given to Mrs. Minor (p. 11), states that "the property is advertised to be sold on the *second* of May," yet according to the advertisement slip annexed to the return (p. 7), it was advertised that it would be exposed for sale on the *fourth* of May.* Moreover, the advertisement was not published in any newspaper printed in the parish wherein the sale was to take place (p. 28); neither was it published by posting the same at the door of the courthouse and other public places in parts of the parish. All that appears as to publication is what is stated in the marshal's return (p. 6), to wit: that "the advertisement appeared in two newspapers, viz: the New Orleans *Republican* and the New Orleans *Advocate*, both papers printed and published in this city." Nor was it advertised in each of these papers for thirty days; the return merely stating (p. 6), that the advertisement appeared "in the former named paper on

*The appraisement (p. 10), is also dated May 4th.

the 1st, 4th, 7th, 16th, 18th and 25th April and the 2d May, 1868, and in the latter named paper on the 11th, 18th and 25th April and the 2d May, 1868." Nor was there any advertisement in the French language (p. 28).

An umpire appointed by the appraisers valuing the property in cash at *forty-five thousand dollars* (p. 10), and there not being offered two-thirds of this appraised value, the property was withdrawn (p. 6).

After which, the only farther advertisement was in the same two papers and not in each for fifteen days; the return stating that it was "in the first named on the 16th, 19th and 22d May, 1868, and in the latter named paper on the 9th, 16th and 22d May, 1868;" and the 22d being the day of sale (p. 8 and p. 15). Then without any better description of the property than is given p. p. 8, 9, there was made at the door of the courthouse of the parish of Ascension in Donaldsonville, what is called in the marshal's return, a sale or adjudication unto James E. Zunts for $10,000; a sale not separately of the articles of personal property mentioned, pp. 9, 10, and not of the land divided into tracts, but a sale altogether, without any separation or division of the whole real and personal estate;—a sale of that which had been appraised in cash at $45,000 for less than one-fourth of that sum, to wit: $10,000, and that not in cash but on terms which though not announced either in the advertisement or at the sale in a proper way, may be gathered from what appears on p. 6, p. 8 and p. 15.

Zunts applied (p. 17) for a monition or advertisement in conformity to an act of the Legislature of the State of Louisiana entitled "an act for the further assurance of titles to purchasers at judicial sales," approved March 10, 1834,* and an act relative to monition and modes of proceeding, approved March 16, 1855.† Under these acts, there is by the monition, a call on all persons who can set up any right to the property in consequence of "any irregularity or illegality in the appraisements, an advertisement in time and manner of sale, or for any other defect whatsoever," to show cause why the sale should not be confirmed and homologated. R. S., p. 340, tit. *monition*, § 2.

In Louisiana, from the maxim, "that in forced alienations of property, all formalities required by law must be strictly fulfilled to give validity to such alienations," it is considered to follow, "that

*Sess. acts, p. 125.

†Sess. acts, p. 463, No. 331.

all persons having an interest to have such alienations annulled, may claim judicially a rescission of the sales by which they are made," *McDonough* v. *Gravier's curator*, 9 Louis. 543; *Fortier* v. *Zimpel*, 5 Rob. 189. The very acts under which the application of Zunts is made, expressly provide that "in case opposition be made to the homologation, and it should appear that the sale was made contrary to law, it shall then be the duty of the judge to annul it." R. S. p. 340, tit. *monition* § 5. Opposition was made by Elmore & King (p 19), by James Dunlop and Thomas W. McCance as surviving partners of Dunlop, Moncure & Co. (p. 20), and by Mrs. Minor (p. p. 21, 22). The deed to Zunts shows (pp. 13, 14), and the fact is admitted (p. 25), that Dunlop, Moncure & Co., were mortgage creditors of the property sold by the marshal, and that Elmore & King were also mortgage creditors.

Under the act of Congress of May 26th, 1824 (4 Stat. at Large pp. 62, 63, *Flanders* v. *Tweed*, 9 Wallace, 430), and the rule of court of Dec. 12th, 1865 (p. 25), the mode of proceeding is conformable to the provisions of the Code of Practice of the State of Louisiana and the acts of the Legislature amendatory thereto. According to articles of that code,* there was a jury, and at the trial, opinions on points of law arising in the cause were excepted to.†

Evidence having been given that there is published in the town of Donaldsonville and parish of Ascension, a newspaper, called "The Drapeau;" that it had been regularly published for the preceding two years and more; and that it is printed in the English and French language, and appears once a week with great regularity (p. 24);—counsel for the opponents excepted to the following opinions of the court, to wit: 1. To the opinion permitting a witness to give testimony as to the practice of the marshal's office not to advertise

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*Edit. 1830, p. 180, art. 494. "The plaintiff, who wishes for a jury, must pray for the same, either in his original petition or by a supplemental petition, which must be presented before the suit be set for trial."

Art. 495. "The defendant, in order to avail himself of the same privilege, must pray for a jury in his answer or previous to the suit being set down for trial."

†Art. 487. "If one of the parties calls on the court to express an opinion on a point of law arising in the cause, such opinion may be excepted to."

Art. 488. "The party excepting to the opinion of the court, must draw a bill of exception, in which the question of fact or of law, on which such opinion has been demanded, shall be concisely set forth as well as the grounds of the exception so taken."

Art. 489. "This bill of exception must be exhibited to the adverse party, who may object to any error in the statement therein contained; it shall then be presented to the court, who, after correcting it, if erroneous, shall sign the same and direct the clerk to file it among the records of the suit."

in French (p. 26); 2. To the opinion refusing to charge the jury that to constitute a valid sale, the marshal was bound by law to have advertised the sale of the property in the parish of Ascension, in which it was situated; and charging them that he was not governed by the laws of the State of Louisiana in reference to the place of advertising judicial sales (p. 28); 3. To the opinion refusing to charge the jury that to render the sale valid, the property should have been advertised in the French language; and charging them that it was not necessary that there should have been any advertisement in that language (p. 28); 4. To the opinion refusing to charge the jury that to constitute a legal advertisement of the property, the advertisement must have been published in a newspaper located in the parish of Ascension, where it was situated, or if this could not be done, by posting the advertisement on the courthouse door and at two other public places in different parts of the parish; and, instead thereof, charging the jury that an advertisement in newspapers published in New Orleans, selected under the act of Congress,* by the clerk of the U. S. House of Representatives, was a sufficient advertisement in a newspaper under the law (p. 29); 5. To the opinion refusing to charge the jury that the 7th section of the act of March 2d, 1867, entitled "an act making appropriations for sundry civil expenses of the government for the year ending June 30, 1868, and for other purposes," is not repugnant to the laws of the State of Louisiana relative to the advertisement of judicial sales of property sold under execution, and does not repeal those laws; and instead thereof, charging the jury that said act of Congress was repugnant to the laws of the State of Louisiana relative to such advertisements (p. 30); 6. To the refusal of the court to charge the jury that if said act of Congress be so construed as to repeal the laws of Louisiana in reference to the advertisement of property sold by the U. S. marshal in judicial sales upon executions, then said act is contrary to the constitution of the United States, especially the preamble thereof, and can have no legal effect (p. 30); 7. To the refusal of the court to charge the jury that, at the second offering, the property should have been sold at a twelve months credit, and that the marshal could not legally require a portion of the price to be paid in cash; that his requiring $500, more or less, in cash, to pay costs, was illegal, and rendered the sale invalid; 8. In

*On p. 28, at the foot of a previous bill of exceptions, is a note that "it was in evidence that newspapers had been selected by the clerk of the House of Representatives and were notified by the judge of this court under the act of March 2d, 1867."

refusing to charge the jury that the description of the property contained in the advertisements of the sale by the marshal, was not sufficiently definite; and, on the contrary, charging the jury that the description was sufficiently accurate; 9. In refusing to charge the jury that a sale made in block of the plantation, containing many hundreds of acres, was in violation of article 132 of the State constitution, and therefore void (p. 132).

Under the influence of the instructions a verdict was found in favor of Zunts. Whereupon it was decreed that the oppositions be dismissed; that the marshal's sale be confirmed and homologated; and that the opponents pay costs (p. 27).

POINTS AND AUTHORITIES.

1. The mode of proceeding on writs, of execution issued on judgments of courts of the State of Louisiana, having been adopted by rule in the circuit court of the United States, held in that State, was the proper rule to govern the marshal of that court. *Collier* v. *Stanbrough*, 6 How. 91. It is no wise affected or impaired by section 7* of the act of Congress of March 2, 1867, "making appropriations for sundry civil expenses of the government for the year ending June 30, 1868, and for other purposes," (14 Stat., p.

* §7 provides "that it shall be the duty of the clerk of the House of Representatives to select in Virginia, South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas and Arkansas, one or more newspapers, not exceeding the number now allowed by law, in which such treaties and laws of the United States as may be ordered for publication in newspapers according to law shall be published, and in some one or more of which so selected all such advertisements as may be ordered for publication in said districts by any United States court, or judge thereof, or by any officer of such courts, or by any executive officer of the United States, shall be published, the compensation for which, and other terms of publication, shall be fixed by said clerk at a rate not exceeding $2 per page for the publication of treaties and laws, and not exceeding $1 per square of 8 lines of space, for the publication of advertisements; the accounts for which shall be adjusted by the proper accounting officers, and paid in the manner now authorized by law in the like cases; and said clerk shall, as soon as practicable after the passage of this act, notify each head of the several executive departments, and each judge of the United States courts therein, of the papers selected by him in accordance with the foregoing provisions; and thereupon and thereafter it shall be the duty of the several executive officers charged therewith to furnish to such selected papers only, an authentic copy of the publications to be made as aforesaid; and no money hereby or otherwise appropriated shall be paid for any publications or advertisements hereafter to be made in said districts, nor shall any such publication or advertisement be ordered by any department or public officer otherwise than as herein provided: provided, that the rates fixed in this section to be paid for the publication of the treaties and laws of the United States in the States therein designated, shall also be paid for the same publications in all the States not designated in this section."

466); the other purposes of the act, besides making appropriations, being connected with expenses of the government; and the advertisements provided for in section 7 being confined to those, the accounts for which are to be "adjusted by the proper accounting officers" of the government, and the money for which is to be paid out of money appropriated by Congress. This is yet more manifest, from the act of March 28, 1867, §2, 3 (15 Stat., pp. 7, 8).

II. In Louisiana, a sale by an officer under execution passes no title, unless he gives such notice, and observes such other formalities as are prescribed by law. So far back as 1816 the Supreme Court of that State held that a sale by an officer under execution, wherein the property had not been duly advertised according to law, did not transfer to the purchaser title in the thing sold. *Reeves* v. *Kershaw*, 4 Mart., 515. Admitting that "a forced alienation results from a sale made at the time and in the manner prescribed by law, in virtue of an execution issuing on a judgment already rendered by a court of competent jurisdiction," it is held in Louisiana that "if a sale is made where these requisites are wanting, the purchaser does not acquire the 'right, title and interest' which the debtor had in the thing sold." *Dufour* v. *Camfranc*, 11 id., 610; the judges considering that "all laws which deprive the citizen of his property, against his wish, must be strictly pursued by those who claim the benefit of them."* S. C., 710. In subsequent cases, the principle has been repeatedly affirmed that "a purchaser under a forced sale does not acquire a good title, where the formalities prescribed by law for the alienation have not been pursued"—that "it is an essential pre-requisite of sales under execution, that public notice should be given of the time and place at which they are to be made." *Mayfield* v. *Comeaux*, 7 Mart. N. S., 185. The uniformity in the ruling was adverted to in 1832. *Delogny, &c.* v. *Smith, &c.*, 3 Louis., 421. It was then declared (S. C. 423) that the ancient rule which denied effect to an adjudication that was not made after the usual delays, preceded by the regular

*Porter, J., in delivering the opinion of the court, says: "There is great error in imagining that the court is influenced by any common law idea, in coming to this conclusion. It is a fact familiar to every one acquainted with that jurisprudence, that the purchasers at sheriffs' sales, under a judgment of a court governed by it, take the property without being in any way responsible for previous irregularities—all that they are required to look to is, that there is a judgment. A strange anomaly it is in that system, and one which we would not, if we had the power, wish to introduce here." S. C. 11 Mart., 710.

advertisements,* remained unchanged by the then recent codes, to wit: the Civil Code,* and the Code of Practice.† And in 1846 the rule that no forced alienation "divests the title of the defendant in execution, unless the forms of law have been complied with," was applied even against an innocent purchaser from the sheriff's vendee; it was held that "even an innocent purchaser must see that all the forms of law are actually fulfilled." *Lawrence* v. *Young*, 1 Louis. Ann., 298.

III. The opponents having denied that the legal advertisements had been made, the *onus probandi* devolved on the petitioner, who had the means of proving that they had been made, if it was really so. *Ex parte Murray*, 6 Rob., 75. It was his duty to prove a compliance with all the legal formalities, and that not being proved by him, the court erred in homologating the sale.‡ *Lamorandier* v. *Meyer*, *&c.*, 8 Id., 156.

The marshal's statement in his return, that "after the legal delay had elapsed" he "advertised the said property for sale, and according to law," is immaterial when he goes on to state when and where the advertisement appeared, and it is shown that this was not according to law. Even if it had been stated unqualifiedly by the marshal in his return that the property was sold after legal advertisements, proof might be admitted in contradiction thereof. *Delony*, *&c.* v. *Smith*, *&c.*, 3 Louis., 422. For, like all

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*Art. 3522, clause 4, provides that "by advertisements, in cases where they are required by law to be given, it is understood that the advertisements are not only to be posted up in the usual places, but published in the newspapers, where such are printed."

†In the edition of 1830, pp. 230, 231, are the following articles:

Art. 666. Animals and utensils attached to plantations and manufactories, and such articles as cannot be easily removed, must be sold on the spot where they are taken, on the day and hour appointed for the purpose by the sheriff.

Art. 667. Three days after the sheriff shall have given notice to the debtor of the property seized from him, unless an injunction issue to prevent him, he must advertise the sale of such property, at the day, place, and hour which he shall designate for that purpose, in the manner hereafter directed.

Art. 638. Every such sale must be announced by public advertisements, composed in English and French, and affixed to the door of the church, if there be one, and to that of the court-house of the parish where the seizure is made.

Art. 669. These advertisements must be inserted, moreover, three times in English and French, to wit, in two newspapers for seizures which are made in the parish of Orleans, and in one newspaper only for seizures which are made in the other parishes where public papers are printed.

‡It was a fatal objection, that the purchaser did not adduce proof that there had been given to the debtor notice of the seizure, with a list of the property seized. See art. 654, 655, p. 228, of Code of Practice, edi. 1830.

other presumptions, that in favor of the officers of justice must yield to evidence adduced to the contrary. *Robinett* v. *Compton*, 2 Louis. Ann., 855; *Grant & Co.* v. *Harris*, 16 Id., 324.

IV. Upon the return and the other evidence, it is clear that there was not here such publication as the law of Louisiana required. *Bourg, &c.* v. *Monginet, &c.*, 1 Rob., 331. The act of March 8, 1841 (Sess. Acts, p. 68, No. 84) being repealed by the act of Feb. 8, 1842 (Sess. Acts, p. 86, No. 37), all acts relating to advertising at sheriff's sales in force at the time of the act of the 8th of March, 1841, including the act of Feb. 28, 1828, as to a judgment less than $300 (Sess. Acts, p. 50, No. 29), were revived by that act of Feb. 8, 1842. *Ex parte Groves, &c.*, 12 Rob., 130. The result of this legislation was, that "a newspaper advertisement should be made when one was published in the parish, and when the amount of the judgment exceeds three hundred dollars." *Freeman* v. *Stacy* 2, Louis. Ann., 616. In 1829, it was a fatal objection to the sale that the property "did not appear to have been advertised at the church door." *Mayfield* v. *Cormier, &c.*, 8 Mart. N. S., 247. The act of April 6, 1843, as to advertisement of sale (Sess. Acts, p. 93, No. 135), could not have helped the purchaser; there not having been "a publication of such sale affixed at the courthouse door and at two other public places in the parish." *Pumphrey* v. *Delahoussaye*, 9 Rob., 44; *Fox* v. *Yo*, 1 Louis. Ann., 335; *Vincent* v. *Sanford*, 5 Id., 560. The act of April 29, 1853, expressly provides "that in all cases in which advertisements are required to be made in relation to judicial proceedings, or in the sale of property under judicial process, such advertisements shall be published in a newspaper printed in the parish in which such judicial proceedings are carried on, or in which such sale is to take place; and if there be no newspaper published in such parish, such advertisements shall be published by posting the same on the door of the courthouse and two other public places in different parts of said *parish*." This is followed in the Revised Statutes, pp, 4, 5, of edi. 1856. These statutes distinctly recognize, as to advertising, a difference where the *sale* is within the limits of the city and parish of Orleans, from what is required when the *sale* is out of those limits. Id., p. 340, tit. *monition*, § 2.

Subsequently to *Delogny, &c.*, v. *Smith, &c.*, 3 Louis, 423, to wit: in 1835, it was held the officer was bound to advertise the real estate "in both the English and French languages for the space of 30 days before the sale;" that the law requires "property situated

in the place where this was, when seized by the sheriff, to be advertised both in the English and French languages, "*McDonough* v. *Gravier's curator*, 9 Louis., 544. In the act of April 29, 1845, there is a proviso "that it shall be the duty of the sheriff or other officer publishing such advertisements to publish the same in the English language only, except when the defendant in the judicial process or the person directing the sale shall request the said advertisement to be published in the French language also." But it is enacted that this proviso shall not apply to certain parishes, one of which is the parish of Ascension. Sess. Acts p. 241, No. 2[illegible] this act and that of March 16, 1854,* was taken the prov[illegible] "advertisement" in the Revised Statutes, which is expr[illegible] certain parishes, one of which is "Ascension," adve[illegible] "shall be published in both the English and French la[illegible] R. S. pp. 4, 5 of edi. 1856. Since the Revised Statutes, i[illegible] provided by the act of Feb. 21, 1866, that "judicial adve[illegible] in French shall not be published in a paper which is pul[illegible] clusively in English, when there is, in the same parish, a[illegible] lished in French, or in French and English; nor will th[illegible] tion of judicial advertisements in the English language [illegible] a paper published exclusively in French when, in the same parish, there is a paper published in the English or in French and English; but that in other respects the law shall remain unchanged as regards the public advertisements in the French and English languages." Sess. Acts, p. 52, No. 29.

The marshal should not have notified Mrs. Minor that the property was to be sold on a day different from that mentioned in his advertisement;† and the advertisement should not only have been published in proper newspapers, and at proper places, in a proper way, but it should have been so published for the length of time prescribed by the Code of Practice. Whereas, even in the newspapers wherein it was published, the publication was not in each for the length of time prescribed by the Code.‡ *Grant, &c.* v. *Walden*, 6 Louis., 32; *Saillard* v. *White*, 14 Id. 85; *McCarty* v. *McCarty*, 19 Id. 302; *Freeman* v. *Stacy*, 2 Louis., Ann. 616. As was

* Sess. acts, p. 102, No. 135.

† This is a material defect; more especially as under the Code of Practice, art. 688, p. 240 of edi. 1830, "The debtor may himself bid for his property seized and offered for sale on the same terms as every other person."

‡ Art. 670, p. 232, of edi. 1830, provides that "the sale of movable effects can only be made ten days after the first notice which has been given, and that of slaves, ships, steamboats and immovables, only 30 days after the same notice."

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said in *McCarty* v. *McCarty*, "Three days should intervene between the notice of seizure and the advertisement (C. Pr., articles 180, 318), in all cases where the sale is to take place precisely 30 days from the time of advertising; or, in other words, a sale of real property cannot be legally made by a sheriff until the thirty-fourth day after the seizure." 19 Louis. 302. And as stated in Document A (p. 9), the law allowed Mrs. Minor "a delay of one day for every twenty miles distance of her domicil from the court in addition to the three days; and the return (p. 10) shows that the service on her was on the 16th of March, 1848, at her domicil, about 85 miles from New Orleans. So that here the sale could not be legally made until the 39th day after the seizure; nor then unless it had been duly advertised for at least 30 days. Whereas here the advertisement, so far from appearing in two newspapers, did not appear in one for that length of time—there being in one a suspension of the advertisement for nine days, to wit, from the 7th to the 16th of April, and in the other, the advertisement never appearing till the 11th of April, though the sale was to take place on the 2d or the 4th of May. This insufficiency of the first advertisement is fatal to the validity of the sale, although it took place under the second advertisement. *Robinett* v. *Compton*, 2 Louis., Ann. 856. But that second advertisement was also insufficient; for it first appeared in the New Orleans Advocate on the 9th of May, which was less than 15 days before the 22d of May, the day of sale.

Although the Code of Practice does not point out in express terms. the specific manner in which property seized in execution shall be described, yet, from some of the articles of that code, especially art's 676 and 702, it is implied that such property must be described more specifically and with greater precision than was done in this instance, *McDonough* v. *Gravier's curator* 9 Louis. 543; *Carmichael* v. *Aiken's heirs*, 13 Id. 211; *McGary* v. *Dunn*, 1 Louis. Ann, 338; *Gales* v. *Christy*, 4 Id. 295; *Seawell* v. *Payne*, 5 Id. 258, 259; *Jaques* v. *Kopman*, 6 Id. 543; *Dearmond* v. *Courtney*, 12 Id. 252. Here the description in the advertisements, pp. 7, 8, was even less specific and less precise than in the inventory, pp. 9, 10.

In Louisiana, it is considered "of the essence of justice and natural equity, that when a forced sale of a debtor's property is made under legal proceedings, that it should not be sacrificed for less than its value, or at least that portion of it intended to be secured by a fair appraisement."* The pretended appraisement is

*According to Code of Practice, pp. 234, 235 of edi. 1830, art. 672, 673, 674, 675 676.

regarded as a mere mockery of justice when by the course of the officer, the appraisers have not the proper means of knowing or finding out the value of the property to be appraised. *McDonough* v. *Gravier's curator*, 9 Louis. 546.

V. The marshal having, by his mode of advertising and otherwise, pursued a course which caused the property to be appraised, not in several parcels, but altogether, did, notwithstanding article 666 and other articles in the Code of Practice, "sell it *in like manner*, at a very low price, not at all adequate to the real value of the property." *Lawrence, Syndic* v. *Bowman, &c.*, 6 Rob. 23. The constitution adopted by the Convention of Louisiana, March 7th, 1868, provides expressly (in art. 132), that "all lands sold in pursuance of decrees of courts shall be divided into tracts of from ten to fifty acres."

VI. The marshal did not comply with art. 681* of the Code of Practice, *Wright* v. *Higginbotham*, 10 Rob. 32; nor with art. 682.† Although the proviso and exception contained in this last article are repealed, yet the authority at the second adjudication, to adjudge the thing seized to the highest and last bidder for what it will bring, is still restricted to the highest and last bidder "on twelve months credit according to the terms mentioned in article 681." Sess. acts 1826, p. 172 § 14; R. S. p. 100, § 59 of edi. 1856. And here the sale was not as to the whole purchase money on such credit according the terms mentioned in article 681.

VII. It appearing that the sale was made contrary to law, the judgment should be reversed with costs, and judgment given that the sale be annulled and that Zunts pay the opponents the costs of their respective oppositions.

CON. ROBINSON, *Counsel*
for pltfs. in error.

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*This article provides that the sheriff on giving notice of the place, day and hour of this new trying, must announce that it will be made at twelve months credit, the purchaser being required to furnish good and sufficient joint security, and special mortgage on the thing sold, bearing interest from the day of the adjudication, at the same rate as that allowed by the judgment.

†At this second adjudication, the thing seized shall be adjudged to the highest and last bidder, provided the amount be equal to three-fifths of the appraisement, on the terms mentioned in the preceding article unless there exists a privilege or special mortgage in favor of some other person besides the highest judgment creditor or entitled to a preference over him.

Austria Stat/La/ 340

No advertisement
articles - £68,669
in English or French
act 1853 -
English only
Does not apply
to censors -

14 Stat at Large 469

References by mr R Burnes during his oral argument in Dunlop Morgan & Co v Zants

~~Wayman v Southard 10 Wheat 59~~

U.S. Bank v Halstead 10 Wheat 57, 59 cited by mr Durant

Blanchard v Galdy 4 Mod. 225

Rex v Vaughan 4 Burr. 2500

act of March 26. 1804 in 2 Story's Laws U.S 933,

act of March 3. 1805 in 2 Stat. 283 & 972 & 3 & 91

act of April 8. 1812 in 2 Stat. 701 & 1224 & 2,

Mayhew v Thatcher 6 Wheat 139

Hiriart v Ballon 9 Peters 156

Owings v Hull 9 " 625

Collier v Stanbrough 6 How 21

Hale v Bermudez 12 Louis. 357

Moore v Knapp 7 Louis. ann. 22

5th section of Louis. act of 1855 p 464

Construction of act of congress of 1863

Faw v Marsteller 2 Cranch 23

Fullerton v Bank of U.S 1 Peters 614 cited by Mr Durant

Bronson v La Crosse Rail-road Co 1 Wallace 405

McCool v Smith 1 Black. 470

On Exemption p 20 as to description of property

Moore v Knapp 7 Louis. ann. 23

Rogers v Morrison 21 Louis. ann. 455

Lewis v Gordy cited by mr Durant

Hiriart v Ballon 9 Peters 167

as to credit not being given for the whole

Collier v Stanbrough 6 How. 21

as to marshal's practice not being a rule of court

Fullerton v Bank of U.S 1 Peters 612

Parsons v Bedford 3 " 445

Duncan v U.S 7 " 458 in connection with rules in 9 Peters 156

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as to Mr Durand's 3d position in his manuscript note, being about tried by jury

Act of Congress in 1805 2 Story's Laws U.S. 972

Mayhew v Thatcher 6 Wheat 131

7 Peters 158 rule 7

Gay's case 20 Louis ann 175

Reporters by Mr Robinson
during his oral argument
in Dunlop Mc Lane & Co v
Zamb

Dunlop Moncure & Co
Plffs in error
vs.
James E. Zents
Defendant

U. S. Sup. Court
No. 127.

Authorities relied on by Counsel of Zents, but not cited in printed briefs.

1°. The Code of Practice of Louisiana did not go into operation until September 1825.

Mayor vs Ripley 2 Ann La. Rep. p. 345.
Williams vs Holloway. 11. do. 516.

2°. All rules of proceeding prior to promulgation of C.P. abrogated.

Sec. 25. act of March 25. p. 160.

3°. Proceedings under the Monition act are summary.

McDonogh vs Copeland 9th L.R. p. 310.
Summary proceedings are tried without the intervention of a jury.

La. C.P. art. 757.

4°. Monition cures defects of form only and does not operate on any matter dehors the proceedings.

City Bank of New Orleans vs Wallace 1. Annual p. 46.
Johnson vs Hamilton. 2 do. 207

G. J. D.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

DUNLOP, MONCURE & CO., ET AL.,
vs.
JAMES E. ZUNTZ. } *No.* 127.

Brief of Counsel for James E. Zuntz, Defendant in Error.

By the law of Louisiana a purchaser of real property at sheriff's sale may apply to the court from which the execution issued for what is there called a monition.

See Acts of La., 15th March, 1855, p. 463.

If the purchase has been made in the city of New Orleans, the monition must be published three times, and if the purchase has been made out of the limits of New Orleans, it must be published for the same space of time and in the same manner required for advertising judicial proceedings, calling on all persons who can set up any right to the property, in consequence of informality in the order, decree, or judgment of the court under which the sale was made, or any irregularity or illegality in the appraisements OR ADVERTISEMENT, in time or manner of sale, or for any other defect whatever, to show cause within thirty days from the day the monition is first inserted in the public papers why the sale so made should not be confirmed and homotogated; *i. e.*, ratified as a judicial act.

Sec. 2, pp. 463 and 464, Acts of La., 1855.

After the thirty days the purchaser may apply to the judge and have the sale approved, and it is the duty of

the judge to approve, provided he *is satisfied that the advertisements have been inserted in the newspapers as already directed.*

See sec. 5, p. 464, Acts of La. of 1855.

The defendant in error, Zuntz, having become purchaser at a sale made by the U. S. marshal on a *fi. fa.* in the case of Deas *vs.* Moncure, in the circuit court of the United States for Louisiana, of a plantation in the parish of Ascension, in that State, applied to the circuit court for such a monition.

See Record, pp. 17 and 18.

To this monition Elmore & King filed an opposition, embracing several distinct grounds.

1. They complained that the property was not advertised for sale in the parish where it was situated, although a newspaper appeared in that parish.

2. That it was not advertised in French.

3. That as the first offer of sale was illegal, the second offer at 12 months' credit was also illegal.

4. That the second offering was made before there had been thirty days' advertisement.

5. That at the second offering the property was not sold on 12 months' credit, but for $500 cash and the balance at twelve months' credit.

6. The property was not accurately described. The quantity of land was not given, and hence the property was sacrificed at less than one-fourth of its value.

See Rec., p. 19.

Dunlop, Moncure & Co. also filed an opposition to the monition, alleging the same grounds, in substance.

See Rec., pp. 20 and 21.

Mrs. Minor filed an opposition on similar grounds, (see Rec , pp. 21 and 22,) and on the further ground

that the property was not sold according to the constitution of Louisiana, especially article 132, (see Rec., p. 22;) and also on the further ground that the appraisers were not sworn according to law.

See Rec., p. 22

The issues presented by these pleadings were tried before court and jury, and the jury found in favor of the defendant in error, Zentz, (see Rec., pp. 26 and 27,) and the court gave judgment, dismissing the oppositions, and confirming the marshal's sale.

See Rec., p. 27.

Nine bills of exceptions were taken to the rulings of the court on points arising during the trial; they all were taken by the opponents.

The first was to the ruling of the court allowing evidence to go to the jury as to the practice of the office of the U. S. marshal in Louisiana not to advertise in French.

See Rec., p. 26.

English is the language of the Constitution, the laws, and the tribunals of the United States. It is, and always has been, the legal language of Louisiana. The act of Congress of February 20, 1811, (2d Stat. at Large, p. 641,) "to enable the people of the Territory of Orleans to form a constitution and State government," declares in section 3 "that, after the admission of the said Territory of Orleans as a State into the Union, the laws which such State may pass shall be promulgated, and its records of every description shall be preserved, and its judicial and legislative written proceedings conducted, in the language in which the laws and the judicial and legislative written proceedings of the United States are now published and conducted."

The 15th paragraph of the sixth article of the constitution of Louisiana, adopted under this authorization, and

with which the State was admitted into the Union, made at New Orleans, 22d January, 1812, declared that "all laws that may be passed by the legislature of the State of Louisiana, and the judicial and legislative written proceedings of the same, shall be promulgated, preserved, and conducted in the language in which the Constitution of the United States is written."

Hence English is the necessity, any other language the convenience of the proceeding; the absence of the latter does not vitiate, that of the former destroys the act. To advertise a judicial sale in French, without English, would be bad; in English without French, good. The practice of the U. S. marshal's office, then, was legal, and proof of it legal proof.

The constitution of Louisiana, made at New Orleans, 7th March, 1868, under which the State was readmitted, in article 109, declares "that no law shall require judicial process to be issued in any other than the English language."

The first advertisement of the sale of the property under the *fi. fa.* was made on 30th March, 1868, (see Rec., p. 7,) so that at that time no law, State or Federal, required an advertisement in French.

The ruling of the court on the first exception was clearly right.

The second bill of exception was to the refusal of the judge to charge the jury that by law the United States marshal should have advertised the sale of the property in the parish of Ascension, where it lay.

See Rec., pp. 27 and 28.

The facts were that the United States marshal advertised the property in newspapers, published in the city of New Orleans, which had been designated by the Clerk of the House of Representatives, under the act of Congress of 2d March, 1867, (see 14 Statutes at Large, pp. 466

and 467,) and which had by that officer been duly notified, as the law requires, to the judge of the United States court in Louisiana.

The act of 1867 referred to makes it the duty of the Clerk of the House of Representatives to select in certain States, among which is Louisiana, one or more newspapers, in which, or in some one or more of which so selected, all such advertisements as may be ordered for publication in said district, by any United States court or judge thereof, *or by any officer of such courts*, or by any executive officer of the United States, shall be published.

The property was advertised in newspapers designated in accordance with this act. If such advertisement be unlawful, it must be because the act is void from the want of power in Congress to pass, or because inconsistent with some other legislation plainly overruling or superceding it.

The power of Congress to regulate proceedings in the courts of the United States is too clear to admit of dispute.

See Riggs *vs.* Johnson County, 6 Wallace, 187, at foot.

That there is no legislation overriding the act of Congress of 2d March, 1867, above quoted, is equally clear.

The act of May 26, 1824, to regulate the mode of practice in the courts of the United States for the district of Louisiana, (see 4th Stat. at Large, p. 62,) declares "that the mode of proceedings in civil causes in the courts of the United States that now are, or hereafter may be, established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the district courts of said State: *Provided*, That the judge of any such court of the United States may alter the times limited or allowed for different proceedings in the State courts, and make by rule such other provisions as may be necessary to adapt the said laws of procedure to the organization of

such court of the United States, and to avoid any discrepancy, if any such should exist, betweeen such State laws and the laws of the United States."

The adoption of the Louisiana practice in the United States court is thus seen to rest on the will of Congress as expressed in the law; and that practice has no force whatever in the United States court from the will of the State legislature. Had Congress not acted, the practice would not have been adopted. But the power to make involves the power to change the law. The adoption, in 1824, of the Louisiana mode of advertising property for sale under *fi. fa.*, did not prevent Congress from abrogating that adoption in 1867, when in the judgment of the legislative branch of the Government a new rule for advertising judicial sales under process from the United States court in Louisiana became necessary. The Federal and not the State law is supreme. Although the forms of writs and modes of process of the several States have been adopted by Congress, the State laws can have no effect where they contravene the legislation of Congress.

See Tolnud *vs.* Sprague, 12 Peters, 328.
Picquet *vs.* Swan, 5 Mason, 38.
Wayman *vs.* Southard, 10 Wheaton, 20.
Bank, U. S., *vs.* Halsted, 10 Wheaton, 51.

It cannot be doubted, at this day, that the authority of Congress to prescribe the mode of selling property on final process in the courts of the United States is entirely independent of State legislation, and that the ruling of the court excepted to was clearly right. It was the practice of the court, so the court declares, and the fact that such is the practice is conclusive of the question.

The third bill of exception was to the refusal of the judge to charge the jury that the property sold must have

been advertised in the French language to make the sale valid.

See Rec., p. 28.

The counsel of defendant in error relies on what is said in regard to the first bill of exceptions to sustain the ruling of the court below on this.

The fourth bill of exceptions was to the refusal of the judge to charge that the law of Louisiana in regard to the advertisement of the property was superior to the law of the United States and the practice of the circuit court.

See Rec., p. 29.

Reference is made to what is submitted in regard to the second bill of exceptions.

The fifth bill of exceptions was to the refusal of the judge to charge the jury that the 7th section of the act of Congress approved March 2, 1867, was not repugnant to the laws of the State of Louisiana relative to advertisement of judicial sales of property sold under execution, and did not report those laws.

See Rec., p. 30.

If the law of Louisiana, as it certainly does, requires property sold under execution from her State courts to be advertised in a different mode from that prescribed by Congress for sales under execution from the United States courts, then that the State law is repugnant to the United States law is too plain, and flows from the mere statement of the proposition, and certainly repeals the adoption of those laws as far as they had in preceding time been made applicable to the court of the United States in Louisiana.

The sixth bill of exception was to the refusal of the court to charge the jury that a construction of the act of Congress of 2d March, 1867, giving it the effect of repeal-

ing the laws of Louisiana in relation to the advertisement of property for sale under judicial process, would be contrary to the Constitution of the United States, *especially the preamble thereof*.

See Rec., p. 30.

Such a point as this was made by Mr. Bibb and Mr. Munroe in Wayman *vs.* Southard; and in regard to its merit, Marshall, C. J., in delivering the opinion of the court in that case, said:

"One of the counsel for the defendant insists 'that the Government of the Union cannot by law regulate the conduct of its officers in the service of executions on judgments rendered in the Federal courts, but that the State legislature retains complete authority over them.'

"The court cannot accede to this novel construction. The Constitution concludes its enumeration of granted powers with a clause authorizing Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

"That a power to make laws for carrying into execution all the judgments which the judicial department has power to pronounce is expressly conferred by this clause seems to be one of those plain propositions which reasoning cannot render plainer. The terms of the clause neither require nor admit of elucidation. The court, therefore, will only say, that no doubt whatever is entertained of the power of Congress over the subject."

Wayman *vs.* Southard, 10 Wheaton, pp. 21 and 22.

The seventh bill of exception was to the refusal of the judge to charge the jury that the United States marshal had acted illegally in selling the property at a second offering on terms of $500 cash to cover costs, and the remainder on a twelve-months' bond, and that such terms rendered the sale invalid.

See Rec., p. 31.

This charge was refused by the court on the ground that the practice of the court was otherwise; which is conclusive as to the charge.

What the practice of the court is must be learned from the judge, who either makes written rules or establishes precedents by continuous action. The whole question involved was fully considered in United States Bank *vs.* Halsted, (10 Wheaton,) and the right recognized to exist in the United States court to regulate the mode of proceeding by the United States marshal in sales of property under final process, without regard to State legislation on the same subject. The practice of the court is vested in the discretion of the judge.

Act of May 19, 1828, 4 Stat. at Large, p. 278.

The eighth bill of exception was to the refusal of the court to charge the jury that the description of the property given in the marshal's advertisement was insufficient.

See Record, pp. 31 and 32.

On reading the description, it would be difficult to see where the objection lies. The front on the Mississippi river and the line of the parish fixed by law and official surveys form two sides of the outlines of the land, the third side is bounded by an adjoining proprietor, the front on the river, and the length of the upper and lower lines, 80 arpents; with such a description of a plantation on the Mississippi river no one could have any difficulty in finding and obtaining possession. It is clear no such description can be held void for uncertainty.

The statute-law of Louisiana, just as those of other States, lays down no precise rules for the description of property in judicial advertisements of sale; it would be manifestly impossible to frame such rules. The La. C. P. (art. 655) says the sheriff shall advertise the sale of the property seized, in the manner and form directed

in the following paragraph. Art 667: He must advertise the sale of such property at the day, place and hour which he shall designate for that purpose, in the manner hereinafter directed. Art. 668: Every such sale must be announced by public advertisements, composed in French and English, and affixed to the door of the church, if there be one, and to that of the court-house of the parish where the seizure is made. Art. 669: These advertisements must be inserted, moreover, three times in English and French, to wit: in two newspapers for seizures which are made in the parish of Orleans, and in one newspaper only for seizures which are made in other parishes where public newspapers are printed. Art. 677: On the day and hour appointed for the sale, the sheriff or his deputy shall repair to the place where it is to be made, and shall proceed to cry the property taken, after having read in an audible voice the notice declaring the nature and description of it.

These are all the portions of the Louisiana law bearing on the question of description, and it is obvious that they require nothing more than common certainty, such as would enable the bidder to know what he was buying, and the officer what he was selling.

A variance between the description of the property advertised and that in the notice of seizure, when not sufficient to mislead, will not annul the proceedings.

See Dobbs *vs.* Hemken, 3 Rob. La. Rep., 129.

But the truth is, that by Louisiana law the parties are concluded against making an objection to the description of the property in the advertisement. By Art. 671 of the La. C. P., the defendant in execution has the right to appoint an appraiser, to estimate, in conjunction with one appointed by the plaintiff, the value of the property, which appraisement determines the price at which it can be sold for cash, and in default of a bid corresponding

to two-thirds of this appraisement, it must be sold on a credit of twelve months. The defendants in execution availed themselves of this privilege by appointing an appraiser, who appraised and acted.

See Rec., p. 10.

This is an acquiescence in the correctness of the description of the property seized, and put an end to all subsequent attempts to controvert it.

See Lewis *vs.* Gordy, 5 Annual, 570.

The ninth bill of exception is to the refusal of the court to charge the jury that the sale of the property having been made in block, *i. e.*, as a whole, was in violation of article 132 of the State constitution, and that the sale was consequently void.

See Rec., p. 32.

The article referred to says: "All lands sold in pursuance of decrees of courts shall be divided into tracts of ten to fifty acres."

This change in the local law had not been adopted as a rule of practice in the United States courts in Louisiana; and hence the refusal to charge as requested. The point involved is completely covered by the rule laid down in Wayman *vs.* Southard and United States Bank *vs.* Holsted, in 10 Wheaton.

It is respectfully submitted there is no error in the rulings of the court below, and the judgment should be affirmed.

THOMAS J. DURANT,
Counsel of Zuntz, Defendant in Error.

2 An 207

In the Supreme Court of the U. S.

DUNLOP MONCURE ET AL.,
vs.
JAMES E. ZUNTZ.

No. 127.
December Term, 2870.

BRIEF OF P. PHILLIPS.

A judgment was recovered on the 8 May, 1866, against the heirs of Henry Doyal, who are appellants in this case, by Mrs. Deas, in the Circuit Court of the United States. Under this judgment a plantation and certain personal property belonging to the estate of said Doyal was sold by the marshal and purchased by the appellee Zuntz.

To protect his title from all future litigation, Zuntz issued a monition under the acts of the State of Louisiana of the 10 March, 1834, and 15 March, 1855. By this monition all persons interested were called on to show cause within thirty days, in consequence of any *informality* in the order or judgment of the Court, or of any *irregularity* or illegality in the appraisement or advertisement in time or manner of sale, or *for any defect whatever*, why the sale so made should not be confirmed and homologated. p. 17. The monition law is to be found in the Revised statutes, p. 340.

Its provisions may be invoked by any purchaser at a judicial sale or by any subsequent purchaser claiming by a regular chain of title.

The mode of calling in all parties interested is correctly adopted in the present monition, which strictly uses the statutory terms.

By the 5th section it is provided, that if it should appear that the sale was made contrary to law, it shall then be the duty of the Judge to *annul it*, otherwise to confirm it.

By the 7th section, the judgment confirming and homologating the claim is declared to have the force of '*res-judicata*, and to operate as a complete bar *against all persons, whether of age or minors, whether present or absent* who may thereafter claim the property sold in consequence of *all illegality or formality* in the proceedings *before or after judgment.*"

Within the time prescribed, the appellants appeared and made opposition to the confirmation of the sale, but their opposition was overruled, the verdict under instructions of the court was in favor of the purchaser, and judgment given by court that the sale had been made "according to the rules and practice of the court and the requisitions of law." It was therefore adjudged, that the sale be "confirmed and homologated, and that the opponents pay the costs of their respective oppositions for which executions may issue." p. 27.

To this judgment the present writ of error is sued out.

The errors complained of are to be found in the several bills of exceptions, taken to charges given to the jury and the rejection of charges prayed for by the opponents.

The attention of the court is now called to the bill of exceptions found at page 29, in which it is recited, that it appears from the evidence that there was a newspaper published in the Parish of Ascension, (where this property is situated,) both in the English and French languages, that no advertisement had been made in said

Parish, but that the advertisement had been made in the city of New Orleans and further this had been the *practice since the act of Congress of March*, 1867, the court charged the jury that this advertisement made in New Orleans in papers selected under the said act by the Clerk of the House of Representatives, was a sufficient advertisement under the law.

When the evidence of the practice was offered, it was objected to as irrelevant and incompetent, but the objection was overruled.

The court thus announces the law, that property wherever located within the State may be legally sold by advertisement made in the city of New Orleans, provided only, that this is made in a paper selected by the Clerk aforesaid.

What is the law of the State as respects advertisement? The code of practice printed in 1825, embodies the provisions theretofore existing. It declares that it shall be published in French and English, in a newspaper of the Parish where the seizure is made.

This continued to be the law until 1853, when it was enacted that the publication was to be in a newspaper of the Parish, where the seizure is made but that it was to be made in English only, unless the defendant should request that it should also be made in French. But from this alteration of the law in relation to the language certain Parishes are excepted from its operation, and among them is the Parish of "Ascension" so that the law of the State from the earliest time has been, that advertisements must be made in the Parish where the property is located, and in the Parish of Ascension, this is still to be done in both languages.

Code of Practice, 668, 669, 670.

The doctrine of "omnia recte acta," in reference to

forced alienation of property is held to be but a presumption, which like other presumptions of fact must yield to proof.

The maxim uniformly followed by the courts of the State being, that in such alienations "*all formalities* required by the laws must be strictly pursued to give validity to them."

These principles were applied to an action for rescinding the sale when it was shown that the sale took place after 29 and not after 30 days as required by law.

W. Donnough v. Gravier, 9 Loui. 532.

Of all the formalties required by law none surely is more important than that which requires public notice, to be given in the parish, county, or district in which the and is located.

With these positive provisions of law, and settled adjudications of the Court before us, it is maintained that Congress intended by the Act of March 2, 1867, to institute a new rule in favor of suitors in the Federal Courts held in that State.

The Act on its face shows the design to use the patronage of the Government to reward its favorites, and for this purpose authorizes the clerk of the House to select certain newspapers for the publication of treaties and laws of the United States, that are ordered to be published, in which papers shall also be published all such advertisements as may be ordered for publication by any United States Court or any judge or other officer thereof.

The account of the advertisements thus referred to are "to be adjusted and paid by the proper accounting officers in the manner now authorized by law."

Now the advertisement under an execution for the sale of property, is not made by order of the Court, or by

any officer thereof—it is required by *law*, and is not dependent on any authority less than the law itself.

It is, therefore, not within the letter of the statute, still less is it within its spirit when it is shown, that the advertisements intended, were those for which the public treasury was responsible.

Besides this, if the subject in question was both within the letter and spirit of the act, this would not dispense with the advertisements required by the law of the State, it would only show that *additional* notice was required.

The evident weakness of this pretence is attempted to be aided by what is termed the practice of the Court.

The utmost duration of the practice can only extend from the 2d March, 1867, the date of the act, to May, 1868, when the advertisement was made. This pretended practice of a year, is to overturn the law settled from the very foundation of the State Government. It is not pretended that this practice of the Marshal had ever before been brought to the attention of the judge, or that he had ever before sanctioned it.

The sanction in this case of such a practice, cannot be regarded as equivalent to a rule of Court—But has the Judge the power even by the adoption of a rule, thus to violate the provisions of the State law?

The act of 1824 provides, that the mode of proceeding in Louisiana, in civil causes in the Courts of the United States, shall be conformable to the laws directing the mode of practice in the Courts of the State. 4 Stats., 63.

The proviso gives power to the judge to alter *by rule* the times limited for different proceedings in State Courts, and adopt such other provisions as may be necesary to adopt the said laws of procedure to the organization of the Court of the United States, and to avoid any discre-

pancy between such State laws and the laws of the United States.

By the 3d sec. of the act of 1828, it is provided that writs of execution and the *proceedings thereon* shall be the same as are then used in the Courts of the State. To which is attached the proviso, that the Court may *by rule* so far, alter final process as to conform the same to any change which may be adopted by the State for its own Courts. 4 Stats., 281.

Beers v. Haughlin, 9 Pet., 361.

The act of 1828 does not apply to Louisiana, but is cited merely to show that Congress has persistently endeavored to produce harmony in the action of the Federal Courts, and prevent their antagonizing with the State tribunals when it was practicable to do so.

The question, therefore, depends upon the act of 1824, which expressly provides that the execution, and the *proceedings thereon* shall be the same as in the State Court, and the power given to the Judge in the proviso does not authorize him by rule to declare that no advertisment of a sale under execution shall be necessary or in any manner to alter the essential provisions of the State law on this subject. Such a rule is not necessary "to adopt the laws of procedure to the organization of the Court," nor does it serve "to avoid discrepancy between the State laws and the laws of the United States."

But further than this, the power if it existed had never been exercised, no *rule* of Court had ever been adopted, which authorized or justified the action of the Marshal in this case.

To the contrary of this, the case shows, that on 12th December, 1865, this Judge had adopted rules of practice in his Court, the first of which is as follows:—

"The mode of proceeding in civil causes, shall be con-

formable to the provisions of the Code of Practice of the State of Louisiana, and the acts of the Legislature amendatory thereto." p. 25.

The decision of the judge as to the validity of the sale is placed not upon any rule or order of his Court.

Nor is it based on any evidence of a long or uniform practice which might be considered as equivalent to a rule.

The evidence shows, that the advertisement was justified by the practice in the Marshal's office since March, 1867—but the Court does not proceed upon this.

The charged was asked, that the Marshal was bound to advertise the property in the Parish of Ascension. This was refused, and the jury instructed, that the Marshal was not governed by the laws of Louisiana, in reference to the place of advertising judicial sales. p. 28.

In another Bill of Exceptions, the judge was requested to charge, that the advertisement must be published in a newspaper in the Parish of Ascension, or, if this could not be done, by posting it on the court-house door and two other public places in said Parish.

This was again refused, and the jury instructed, that the advertisement in the New Orleans papers, selected by the Clerk of the House of Representatives was sufficient under the law. p. 29.

He was then asked to charge, that the act of Congress was not repugnant to the laws of Louisiana as to advertisement. But he refused this, and charged, that the act was repugnant, to which he added "and it appeared to have been the practice of the Marshal so to advertise since the act of 2 March, 1867."

The power of the Court to change by rule, the process

and proceedings thereon, was discussed in 1825, in the cases of Wayman v. Southard, and Bank v. Halstead, 10 Wheat., 1, and 51.

These decisions were under the acts of 1789 and 1792, which adopts the forms of executions and modes of process as were *then used* in the Supreme Courts of the respective States.

It was held that the terms "the forms and modes of proceeding," embraces the whole progress of the suit, and every transaction in it, from its commencement to its termination, which does not take place until the judgment is satisfied.

The case of Palmer v. Allen, 7 Cranch., which had been cited to show that the act of 1789 did not adopt the laws of the several States, as they stood in 1789, as the rule by which Federal officers are to be governed in executing process, was held not to justify the argument for which it was cited.

These acts, however, adopted the State practice existing at a specified period, and no act of a State subsequently enacted, could effect the practice in the Federal Courts.

In the first of these cases, it was held that the laws of Kentucky respecting executions, passed subsequent to the process act were inapplicable to executions, which issue on judgments rendered by the Federal Court.

The other case involved the same principle and commenting on the act of 1792, the Court refers to the proviso—"subject, however, to such regulations and additions as the said Courts respectively, shall in their discretion deem expedient," and says, there can be no doubt that the power here given to the Court extends to all the subjects in the preceding parts of the section. That this act presupposes that the Federal Courts had under the

act of 1789, adopted the forms of process and the proceedings which were then allowed in the Supreme Courts of the States, and ratifies and continues such practice. But no parts of the act which looks to the adoption of the various changes that might thereafter be made in the the State Courts. It was nevertheless foreseen that changes would be made in the State Courts which might be proper to be adopted in the Courts of the United States; and not choosing "to sanction such changes absolutely in anticipation power is given to the Courts over the subject with a view, no doubt, so to alter and mould their proceedings as to conform to those of the State Courts as nearly as might be consistently with the ends of justice."

It is, therefore, evident, that when Congress by act adopts the State practice, the authority conferred on the Court is to be held in subordination to it.

We then come to the act of 1824, for regulating the mode of practice in the Courts of the United States, for the District of Louisiana, which provides "that the mode of proceeding in civil causes in the Courts of the United States, established in that State shall be conformable to the laws directing the mode of practice in the District Courts of said State." This, like the act of 1792, also contains a proviso, but differing in the powers conferred upon the Court, and is in these words: "that the judge of any such Court of the United States may alter the *times* limited or allowed for different proceedings in the State Courts, and make by rule such other provisions as may be necessary to adopt the said laws of procedure to the organization, of such Court of the United States, and to avoid any discrepancy if any such should exist.

It does not need argument to show that the power thus conferred does not authorize the adoption of a rule dispensing with advertisement in the Parish in which the

property to be sold is located. Such a rule would be in direct conflict with the purpose of the grant, which was intended to avoid discrepancy in the practice of the Federal and State Courts.

On the acts of 1824, this Court held in Parsons v. Bedford et al., that the Federal Courts were bound to follow the practice in the State Courts unless a *rule had been adopted* superseding that practice.

But it was not the intention of Congress "to give an absolute and imperative force to the State modes of proceeding as is shown by the authority conferred on the judge to modify them, so as to conform to the organization of his Court.

The error complained of was the refusal of the judge to direct the clerk to take down the evidence given by witnesses in a cause tried by a jury.

But as the Constitution declares, that no fact tried by a jury shall be re-examinable in any Court of the United States—the Court held that the act of 1824 should not receive such a construction unless its terms rendered it unavoidable, as would involve a violation of the Constitution. As the Court could not in such a case re-examine the evidence, it would have been a vain thing to require the Clerk to record it. 3 Pet., 433.

On like reason it was held in Parks v. Turner, that the reasons for judgment need not be stated by the judge as required by the State practice, such a provision being inconsistent with the modes of proceedings in the Courts of the United States. The reasons form no part of the record when brought into this Court. They cannot be inserted in a Bill of Exceptions. The principle of law as applied to the case is all that is certified, and not the reasons upon which the Court decided.

12 How'd., 46.

It is only necessary to refer to two other cases which are mainly relied on to sustain this judgment. Fullerton v. Bank, 1 Pet., 612, and Duncan v. United States, 7 Pet., 436.

The first of these cases was decided in 1828, on a writ of error to the Circuit Court of Ohio. The judgment was founded on a note, made in 1820, and the suit was instituted against the maker and three endorsers, all included in one action, under the provisions of an act of the State, passed in 1820. It was maintained that no such suit could be maintained in the Federal Court, as it was unauthorized by any rule.

The State of Ohio was not admitted into the Union until 1802, so that the provisions of the act of 1792, adopting the practice of the State Courts had no operation in that State.

The District Court of Ohio was however authorized to adopt a practice for its own government. Finding a practice established in the State, "in the true spirit of the policy preserved by the United States, it proceeded according to the practice of the State," and by a single rule adopted the State system, as this court at an early period adopted the practice of the King's Bench.

Thus when the seventh Circuit was established in 1807, the judge thereof found the State practice adopted, in fact into the Circuit Court of the United States, and the State practice has by a uniform undertanding been pursued by that court without having passed any positive rules on the subject.

To the objection that there was no written rule justifying the form of this suit, the court say, "written rules are unquestionably to be preferred; but what want of certainty can there be, where the court by *long acquiescence* has established it to be the law of that court, that the

State practice shall be their practice; such we understand has been the course of the courts of the United States, in Ohio for *twenty-five years past.* The practice may have begun and probably did begin in a mistaken construction of the process act, and then it partakes of the authority of adjudication."

"In the present case the act of the State violated no principle, was early introduced into the courts of the United States, and has been there *acted upon through a period of eight years.*"

The case of Duncan v. United States, was on writ of error to the District Court of United States for Louisiana, and was a suit on a Paymasters bond. The defendant offered a statement for the purpose of obtaining a special verdict on the facts in pursuance of a statute of the State passed in 1819, and this was overruled.

It was held that the act of 1824 was a virtual repeal within the State of Louisiana, of all previous acts of Congress which regulated the practice in the courts of the United States. "That as the act of 1824 had adopted the State practice, the court would not sanction the disregard of such practice unless it appear that by the exercise of the power of the District Judge, or by other means, the practice had been allowed."

The court then say, that it appears that the act of 1817, has not only been repealed, but the record shows that in the year 1830, when the decision objected to was made, "*there was no such practice of the court as was adopted by the act of* 1824."

To this is added that "written rules" are not essential. The practice may be established "by a uniform mode of proceedings for a series of years, and this forms the law of the court." "On a question of practice *under the cir-*

cumstances of this case, it would *seem* that the decision of the District Court should be conclusive."

These two judgments were made to sustain the harmony of practice between the several courts. They are now urged in support of a proposition which utterly destroys that harmony. A practice which has been sanctified by time, and which has passed under the immediate cognizance of the judge, so as to become as certain as a written rule, is applied to a practice which has obtained in the Marshals office for the period of a year!

Can the decision of the Judge that this practice has obtained conclude enquiry here as to its validity? The court will mark the cautious manner of the decision last cited "under the circumstances of this case, it would seem."

But what are the circumstances of the case under consideration? The court had adopted a witten rule in 1865 by which the practice of the State courts was expressly referred to as to its mode of proceeding.

It is admitted that this practice had been enforced down to the passage of the act of Congress of 1867, and the mode of advertising adopted in this case is only sustained because the court held that such practice was justified by the true construction of that act. Surely if the court had been of opinion that this act of 1867 had not superseded the State law, it could not have sustained the proceedings merely on the ground that such had been the practice in the Marshal's office for a twelve months!

The question, then, we submit must eventually turn upon the interpretation of the act of Congress. If this did not authorize the marshal in his proceeding, there is no power conferred on the court which could have justified it; and if there were such power, it has never been exer-

cised in such a mode as would secure the sanction of this tribunal.

Without adverting to the other grounds stated in Mr. Robinson's brief, the case is submitted in the following propositions:

First. That the law of the State in reference to advertisements was adopted by the act 1824, and that there is no warrant in the proviso to that act which would justify the judge in making a rule or permitting a practice in violation of it.

Second. That the act of Congress neither in its letter nor spirit applies to notices of this kind, and that if it did apply, it merely required additional notice but did not abrogate that which was to be made under the State law.

Third. That by the laws of the State such defect in the advertisement would be ground for rescinding the sale in a direct action, and that in the controversy provoked under the monition law, it is expressly made the ground for annulling the sale.

P. PHILLIPS,
Of Counsel for the Appellant.

Washington, March, 1871.

1 Publication
2 Issue of Bonds
3 -

Robinson
3 Pet Peters Decisions
7 Pet
cases 1825

To Wheat-
2 Brockenbrough 432
" " " 972
" " 1224
admitted 2 "
see 2 — 3 Peters
unanimously —
6 Wheat 130
9 Pet 156 Note
Circle 6 How 21 —